

(16,158.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 109

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WILLIAM HOLDER, PLAINTIFF IN ERROR,

*vs.*

AULTMAN, MILLER & COMPANY.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
- EASTERN DISTRICT OF MICHIGAN.

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1

*Narr.*

UNITED STATES OF AMERICA :

The Circuit Court of the United States for the Sixth Circuit and  
Eastern District of Michigan.

EASTERN DISTRICT OF MICHIGAN, ss :

Aultman, Miller & Co., a manufacturing corporation organized and existing under the laws of the State of Ohio, and who is a citizen of the State of Ohio, by Fred. A. Baker, its attorney, complains of William Holder, a resident of the village of Laingsburg, in the county of Shiawassee, in the eastern district of Michigan, and who is a citizen of the State of Michigan, the defendant herein, in plea of trespass on the case upon promises, filing this declaration as commencement of suit, &c.

For that whereas heretofore, to wit, on the 1st day of January, 1894, the said plaintiff was a corporation, organized under the laws of the State of Ohio for the purpose of engaging in the business of manufacturing agricultural implements and machinery, with its manufacturing establishment and its office for doing business located at the city of Akron, in the county of Summit, in the State of Ohio, and the authorized and actual capital stock of said corporation being one million of dollars, to wit, at the city of Lansing, in said eastern district of Michigan;

And whereas, afterwards, to wit, on the 27th day of February, at the said village of Laingsburg and at the city of Lansing, in the eastern district of Michigan, the said plaintiff, by D. C. Gillett  
2 and R. H. Worth, its duly authorized agents, entered into a written contract with the defendant, William Holder, in the words and figures following—that is to say :

This agreement, made this 20th day of February, A. D. 1894, between Aultman, Miller & Co. (a corporation duly incorporated under the laws of the State of Ohio), of Akron, Ohio, of the first part, and William Holder of Laingsburg, county of Shiawassee and State of Michigan, of the second part, witnesseth : That the party of the second part is hereby authorized to sell Buckeye mowers, reapers, and binders, and extra parts thereof, in the following territory and vicinity and Elsie & vicinity including the township of Washington and Elban Gratiot county, Chapin in Saginaw Co. and the west half of Fairfield in Shiawassee Co., for and during the season of 1894, on the following terms and conditions, viz : The party of the second part agrees :

First. To use all reasonable diligence in canvassing and supplying said territory with said machines and in maintaining their reputation in preference to any other kind of mowers and combined mowing and reaping machines and harvesters and binders, and not to canvass or solicit outside of the above territories.

Second. To sell the said machines at the retail list prices authorized by said first party, with freight and charges from Laingsburg added thereto, on the following terms viz: One-half, October 1, 1894,  $\frac{1}{2}$  Oct. 1st, 1895. In extreme cases one-third October 1, 1894, one-third October 1, 1895, one-third October 1, 1896, shall be allowed on binders only for which settlement must be made with the purchaser on the delivery of machines, and to grant credit to such persons only as are of well-known responsibility and of good reputation

for the payment of their debts, to see that all notes taken for  
3 machine sold are drawn on blanks furnished by the said first  
party, and signed by one or more persons of well-known re-  
sponsibility and in all cases of doubt as to the responsibility of the  
purchaser to require a mortgage of property real or personal amply  
sufficient to secure a payment in full of all such notes, all notes  
bear interest as specified in the blanks provided by first party, and  
in no instance to run beyond the time above mentioned. And if  
at any time the party of the first part shall learn that any of the  
said notes were not signed by persons of well-known responsibility,  
then the party of the second part agrees to redeem all such notes,  
with accrued interest, in cash or approved notes at the option of the  
party of the first part.

Third. To endorse with waiver of protest and notice of non-payment, all notes given by renters and parties owning no real estate, unless sufficiently secured by chattel mortgage or otherwise and all notes which on examination by a banker or other competent authority, chosen by the first party or its general agent, are pronounced not good or insufficiently secured.

Fourth. That all machines and parts of machines and all other goods received on commission under this contract shall be held by the said second party on special storage and deposit as the property of the party of the first part, until converted into notes or money, as herein provided, which notes are to be received by said second party and held on special deposit as the property of said Aultman, Miller & Co. until forwarded to said Aultman, Miller & Co. or delivered to their authorized agents.

That in all cases where machines are sold for cash or part cash  
and notes, all such cash received shall be promptly remitted to  
4 Aultman, Miller & Co. Akron Ohio, or their authorized agent  
and that any and all sums of money that may be in any case  
become due and owing from said party of the second part, to said  
party of the first part shall be collectible without any relief what-  
ever from valuation or appraisal laws.

Fifth. To see that all machines sold are properly set up and started, and as far as possible, that they give satisfaction to the purchaser and to keep a correct record of sales, showing the time and post-office address of each purchaser, with price term and date of sale, said record of sales to be reported to the party of the first part at its request, and at all times to be subject to the inspection of its general agent.

Sixth. To receive all machines, extras or other goods shipped or delivered on account of said first party, to pay the freight on them,

keep them well housed, well cared for free from taxes and to insure in a reliable company all goods of every nature on hand that belong to Aultman, Miller & Co., with loss or damage on the same made payable to Aultman, Miller & Co. as their interest in said property may appear, at the time of said loss or damage. To keep all unsold goods well housed and cared for, subject to the order of party of the first part until renewal of this contract, or if necessary up to May 1, 1895, and in no case making charge for handling or storing the same ordinary freight charges in all cases to follow machines and extras reshipped, but no express charges shall follow goods reshipped, nor shall the party of the first part in any case be obliged to pay express charges of goods shipped to the party of the second part.

Seventh. In furnishing repairs free of charge to customers, to do so only when there is a flaw or defect in the original and in 5 all cases of repairs so furnished to have on hand the broken or defective pieces to show at settlement and to deliver the same to the party of the first part, or otherwise bills of this kind will not be allowed and in no case whatever to take from any machine belonging to the first party any part thereof as extras or repairs, to pay at settlement for all machines on hand in case of a violation of this clause.

Eight. To make prompt and accurate reports of machines on hand as often as requested by the first party or its general agent, to promptly execute orders for transfer of machines if any are on hand unsold and in case of failure to make such reports or transfers to pay said first party for all machines remaining on hand at settlement unsold by reason of such failure, at the option of said first party.

Ninth. To sell or assist in the sale of no other mowing machines, or combined mowing and reaping machines, or harvesters and binders, in said territory, during the continuance of this contract and not to purchase, keep in stock or offer for sale binding twine, knives, sickles, sections or other parts of the Buckeye machines manufactured and furnished by any other than the first party.

Tenth. To sell and deliver all machines set up and used as samples, or settle for same in cash or approved notes at settlement time.

Eleventh. To publish a notice of this agency in any one or more newspapers in the above-named territory during the months of April, May and June, without charge to the first party hereto. To receive and pay transportation charges on all advertising matter forwarded by said first party, and to see that it is properly distributed among the farmers of the above-described territory.

6 The party of the first part further agrees with the party of the second part:

First. To furnish to said second party such machines of the kinds they make as may be wanted to supply said territory, so long as their stock on hand will enable them to fill the orders. No commission will be allowed on orders taken and not filled nor on machines which have for any cause been returned and in no case shall the party of the second part be entitled to a commission on a sale

where the machine has not been delivered and properly set up and started to the satisfaction of the purchaser and settled for. Nor shall any commission whatever be due said second party until a full settlement of account is made, and that the said second party be ready to make settlement on demand to the first party or their authorized agents.

Second. To allow said second party as compensation for receiving, handling, storing, settling, setting up and starting machines and making collections, whenever required, a commission equal to an amount which deducted from the price for which the machines have been sold after deducting other allowances of every nature, will make the net amount to be retained by the said first party in notes and cash in the same proportion as taken for machines sold as follows:

Freight allowed.	Width of cut.	If sold for cash.	If sold for notes.
Buckeye light mower 1 horse....	3 ft. 9 in.	32 00	34 00 each
" " "	.... 4 " 3 "	33 00	35 00 "
New Buckeye mower	.... 4 " 6 "	34 00	36 00
" " " two combined 4 " 6 "			
Buckeye mower.....	5 "	35 00	37 00
7 Buckeye mower.....	6 feet	40 00	42 00 "
New Buckeye table rake..	5 " 2 in.		
New Buckeye dropper.....	5 " 2 "		
Buckeye frameless binder.....	5 "	90 00	90 00 "
Buckeye frameless binder.....	6 "	90 00	95 00 "
Buckeye frameless binder.....	7 "		
Buckeye Banner binder.....	5 " 3 "	90 00	95 00 "
Buckeye bundle-carrier for binders.....		4 50	
Buckeye flax and clover dump.....		2 70	
Buckeye binder truck, two-wheeled.....		6 75	

Where an outfit consists of binders, truck and bundles carrier is sold to one person the net cash price shall be \$95.00 time price \$95.00 for 5 ft. machines and \$95.00 cash or \$100.00 time for 6-ft. machines.

Third. To furnish the said second party a stock of extra casting and other repairs (excepting knives, sickles knife and sickle heels sections rivets, guards, canvasses pitman ferrules, spring keys, brass boxes, chain link and other net goods) from the prices of which as found in the published price-list a commission of 25 per cent. will be allowed, all such extras sold to be paid for in cash on demand of the first party or their authorized agents.

Fourth. To sell to said second party knives and sickles and knife and sickle heels guard, section and rivets at a discount of 50 per cent. and pitman ferrules, spring keys, brass boxes, chains links, canvasses, bolts and other net goods, at a discount of 50 per cent all to be paid for in cash on or before the first day of August, 1894.

Fifth. To furnish said second party blank notes, orders 8 circular- and posters and such other printed documents as they are accustomed to supply their agents.

NOTICE.—It is especially agreed that when sales have not been closed by cash or notes on or before delivery as stated above then the party of the first part may send a person to settle with the purchasers of machines and the party of the second part shall pay all the expenses of making such settlements. It is further agreed that Aultman, Miller & Co. shall not be held liable under any written or printed warrantly given by them on their machines that are allowed to go out without first having been settled for. No canvass or expert that may be sent to aid you shall have any authority to make any change whatever in our contract with you, and all sales made by him will be subject to your approval or rejection as no allowance will be made to you for loss of interest or reduction in price on sales made by him. Nor will any promise not authorized in writing by our manager at Lansing, Mich., be recognized at settlement and the first party reserves the right to rescind or annul this contract at any time that the said party of the second part shall violate or neglect to fulfill any of the above stipulations.

In witness whereof, the parties hereunto have set their hands the day and date above written.

This contract not valid unless countersigned by our manager at Lansing, Mich.

AULTMAN, MILLER & CO.

App. at Akron by D. C. Gillett.

WM. HOLDER.

Countersigned, Lansing, Mich., Feb. 27th, 1894.

R. H. WORTH, *Manager.*

9 And whereas, afterwards, to wit, on the 27th day of April, 1894, the said written contract was approved by the plaintiff at its office in the city of Akron, in the State of Ohio, and the same then and there became and was a binding and valid contract between the defendant and the plaintiff, according to the terms thereof, to wit, at the city of Lansing, in the eastern district of Michigan.

And the plaintiff avers that it faithfully performed said contract on its part, and between, to wit, the 27th day of February, 1894, and the 1st day of September, 1894, under and in pursuance of said contract and at the request of said defendant, it shipped from Akron, Ohio, to said defendant at Laingsburg, Michigan, a large number of Buckeye mowers and reapers and binders and extra parts or repairs for the same, to wit, 100 Buckeye mowers and 100 Buckeye reapers and binders and 200 extra castings, parts, and repairs, all of great value and price, to wit, of the value and price of ten thousand dollars, to wit, at Laingsburg, in the eastern district of Michigan.

And the plaintiff further avers that on and between the dates last aforesaid the said mowers and reapers and binders and the said extras were received by the said defendant under and in pursuance of said contract, and the same were sold and disposed of by him to divers farmers and customers in the townships named in said contract, and that on, to wit, the 1st day of September, 1894, there was

due and owing to the plaintiff for and on account of the sales so made by him under said contract a large sum of money, to wit, the sum of five thousand and fifty-two and  $\frac{5}{100}$  dollars, and which sum of money the said defendant then and there promised to pay to the plaintiff on demand, yet the said defendant hath disregarded his said promise and hath not, although often *been* requested so to do, paid the said sum of money or any part thereof to the plaintiff, to wit, at Laingsburg, in said eastern district of Michigan.

11      Also, for that whereas the defendant, heretofore, to wit, on the 1st day of September, A. D. 1894, at Laingsburg, in said county of Shiawassee, in the said eastern district of Michigan, was indebted to the plaintiff in the sum of six thousand dollars for the price and value of goods then and there sold and delivered by the plaintiff to the defendant at his request.

And like sum for the price and value of work then and there done and materials for the same provided by the plaintiff for the defendant at his request.

And in like sum for money then and there lent by the plaintiff to the defendant at his request.

And in like sum for money then and there paid by the plaintiff for the use of the defendant at his request.

And in like sum for money then and there received by the defendant for the use of the plaintiff.

And in a like sum for money then and there found to be due from the defendant to the plaintiff on an account stated between them.

12      And thereupon the said defendant afterwards, and on the day and year aforesaid, in consideration of the premises, respectively then and there promised the plaintiff to pay it the said several sums of money respectively on request; yet the said defendant hath disregarded his said promises and hath not (although often requested so to do) paid any of the sums of money or any part thereof to the plaintiff, to the plaintiff's damages of six thousand dollars, and therefore it brings suit, etc.

FRED. A. BAKER,  
*Plaintiff's Attorney.*

To the above-named defendants:

Take notice that on the trial of the above cause the plaintiff, under the money counts, will give in evidence certain cop- of which — given below.

\_\_\_\_\_.  
*Plaintiff's Attorney.*

13      I acknowledge myself as security for any costs that may be awarded against the plaintiff herein.

FRED. A. BAKER.

Detroit, September 21, 1894.

14

*Notice to Plead.*

The Circuit Court of the United States for the Eastern District of Michigan.

AULTMAN, MILLER & Co. }  
 vs. } No. 8044.  
 WILLIAM HOLDER. }

Narr.

To the within-named defendants:

Take notice that on filing a declaration in this cause (of which the within is a true copy) as commencement of suit, a rule was entered in the book of common rules kept by the clerk of said court, in his office, in the city of Detroit, requiring you to appear and plead to said declaration within twenty days after service on you of a copy thereof and notice of said rule, or judgment, etc.

Yours, etc.,

FRED. A. BAKER,  
*Attorney for Plaintiff.*

DETROIT, Sept. 21, A. D. 1894.

Filed September 21, A. D. 1894.

WALTER S. HARSHA, Clerk.

FRED. A. BAKER,  
*Attorney for Plaintiff.*

15

*Entry of Rule to Plead.*

In the Circuit Court of the United States for the Eastern District of Michigan.

AULTMAN, MILLER & Co. }  
 vs. } No. 8044.  
 WILLIAM HOLDER. }

On filing declaration in this cause as commencement of suit and on motion of Fred. A. Baker, attorney for the plaintiff, it is ordered that the said defendant do appear and plead to plaintiff's declaration within twenty days after service upon it of a copy thereof and notice of the entry of this rule to plead, or judgment, &c.

WALTER S. HARSHA, Clerk.

FRED. A. BAKER,  
*Attorney for Plaintiff.*

Sept. 21st, 1894.

**UNITED STATES OF AMERICA:****The Circuit Court of the United States for the Eastern District of Michigan.**

**AULTMAN, MILLER & Co., a Corporation, Plaintiff,**  
**vs.**  
**WILLIAM HOLDER, Defendant.**

And now comes defendant, William Holder, by his attorneys, Wood & Wood, and demands a trial of the matters set forth in the plaintiff's declaration.

Yours, etc.,

**WOOD & WOOD,**  
*Attorneys for Defendant.*

To Fred. A. Baker, attorney for plaintiff:

Please take notice that on the trial of said cause defendant will show, under the general issue above pleaded:

First. That said plaintiff is a foreign corporation, organized and existing under the laws of the State of Ohio, and having its principal and corporate office in the city of Akron, in said State.

Second. That act No. 182 of the laws of Michigan for the year one thousand eight hundred and ninety-one, as amended by act

17 No. 79 of the laws of Michigan for the year one thousand eight hundred and ninety-three, provides that "every foreign corporation or association which shall hereafter be permitted to transact business in this State which shall not prior to the passage of this act have filed or recorded its articles of association under the laws of this State and been hereby authorized to do business therein shall pay to the secretary of state a franchise fee of one-half of one mill upon each dollar of the authorized capital stock of such corporation or association, and a proportionate fee upon any and each subsequent increase thereof, and that every corporation heretofore organized or doing business in this State which shall hereafter increase the amount of its authorized capital stock shall pay a franchise fee of one-half of one mill upon each dollar of such increase of authorized capital stock of such corporation or association and a proportionate fee upon any and each subsequent increase thereof: Provided that the fee herein provided, except in cases of increase of capital stock, shall in no case be less than five dollars, and in case any corporation or association hereafter incorporated under the law of this State, or foreign corporation authorized to do business in this State, has no authorized capital stock, than in such case each and every corporation or association so incorporated or doing business in this State shall pay a franchise fee of five dollars. All contracts made in this State after the first day of January, eighteen hundred ninety-four, by any corporation which has not first complied with the provisions of this act shall be wholly void.

This act is ordered to take immediate effect.

Approved May 13, 1893."

18 Third. That the contract set forth in plaintiff's declaration and upon which right of recovery is based was made and is to be performed in the State of Michigan within the meaning of the said act.

Fourth. That said plaintiff, being foreign corporation, was at the time of the execution of said contract doing business in the State of Michigan within the meaning and application of said statute.

Fifth. That said plaintiff has not complied with the requirements of said statute; that neither prior nor subsequent to the passage of said statute has it filed or recorded its articles of association with the secretary of state for the State of Michigan, neither has it paid to said secretary of state the franchise fee of one-half of one mill upon each dollar of its authorized capital stock.

Sixth. That owing to plaintiff's non-compliance with said Michigan statute the said contract is absolutely void and without force as against defendant.

Yours, etc.,

WOOD & WOOD,  
*Attorneys for Defendant.*

8044. United States of America. The circuit court of the United States for the eastern district of Michigan. Aultman, Miller & Co. vs. William Holder. Defendant's plea and notice. Filed in clerk's office October 4, 1894. Walter S. Harsha, clerk.

19

*Waiver of Jury.*

In the Circuit Court of the United States for the Eastern District of Michigan.

AULTMAN, MILLER & Co. }  
vs. } No. 8044.  
WILLIAM HOLDER. }

It is hereby stipulated and agreed by the attorney for the respective parties that the jury in this cause be, and the same is hereby, waived, and that said cause be tried by the court.

F. A. BAKER,  
*Attorney for Plaintiff.*  
WOOD & WOOD,  
*Attorneys for Defendant.*

Filed in clerk's office Nov. 3rd, 1894.

WALTER S. HARSHA, Clerk.

20

*Trial Before Court Submitted.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court-room, in the city of Detroit, on Saturday, the third day of November, in the year one thousand eight hundred and ninety-four.

Present: The Honorable Henry H. Swan, district judge.

AULTMAN, MILLER & Co. }  
 vs. } 8044.  
 WILLIAM HOLDER. }

The parties in this cause being in court, by their respective attorneys, ready for trial, having filed a written waiver of jury, the court now hears the proofs and allegations of the parties and the arguments of counsel, and thereupon said cause was submitted.

21

*Judgment for Plaintiff.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court-room, in the city of Detroit, on Monday, May thirteenth, in the year one thousand eight hundred and ninety-five.

Present: The Honorable Henry H. Swan, district judge.

AULTMAN, MILLER & COMPANY }  
 vs. }  
 WILLIAM HOLDER. }

This cause having been heretofore tried by the court without a jury and duly submitted, the premises having been seen, considered, and due deliberation thereon having been had, the said court now here finds that the said defendant did undertake and promise in manner and form as the said plaintiff hath in its declaration in this cause complained against him, and assesses the damages of the said plaintiff on occasion of the said premises at the sum of five thousand two hundred twelve dollars and fifty-six cents (\$5,212.56).

Thereupon, on motion of Mr. F. A. Baker, attorney for said plaintiff, it is by the said court now here considered that the said plaintiff do recover against the said defendant its damages aforesaid, together with its costs and charges by it about its suit in this behalf expended, to be taxed, and that said plaintiff have execution therefore.

22

*Opinion of Judge Swan.*

In the Circuit Court of the United States for the Eastern District of Michigan.

AULTMAN, MILLER & COMPANY }  
 v. } No. 8044.  
 WILLIAM HOLDER. }

MAY 13, 1895.

Messrs. F. A. Baker, C. L. Sadler, C. C. Kirkpatrick, for plaintiff; Messrs. Wood & Wood, for defendant.

The plaintiff is a corporation organized under the laws of the State of Ohio, and is engaged in the business of manufacturing agri-

cultural implements at Akron, in that State, and sells reapers and mowers in Michigan through local agents at different places, who sell on commission for the company and as its agents. A written contract is entered into between the company and the agent similar in form to that sued upon in this case. The action is assumpsit and is brought against the defendant, William Holder, who is a citizen of Michigan, resident of Lansing, and acted for the plaintiff as a commission agent under the contract executed by himself at Lansing February 27th, 1894, and there countersigned by the local agent of the plaintiff under these provisions of the contract: "This contract not valid unless countersigned by our manager at Lansing and approved at Akron." The parties have signed and filed a stipulation of facts of which the following is a copy:

23 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Eastern District of Michigan.

AULTMAN, MILLER & Co. (a Corporation), Plaintiff, }  
v.  
WILLIAM HOLDER, Defendant. }

To said court:

It is agreed between the parties to the above action that the following facts are agreed upon without the submission of evidence, and the parties ask that this stipulation of facts be made a part of the record:

First. It is agreed that the contract referred to between the parties was executed, accepted, and approved as set forth in the said contract.

Second. It is agreed that the provisions of the contract, in so far as plaintiff is concerned, have been fulfilled.

Third. It is agreed that the balance due, amounting to five thousand and fifty-two and fifty-six hundredths dollars (\$5,052.56), is correct.

Fourth. It is agreed and admitted that Aultman, Miller & Co. is a corporation organized and existing under the general laws of Ohio, having its corporate office in the city of Akron, county of Summit and State of Ohio, and having its manufactory at the same place.

24 Fifth. It is agreed and admitted that Aultman, Miller & Co. does not manufacture any goods whatever within the State of Michigan.

Sixth. It is agreed that Aultman, Miller & Co. sells its goods by means of local commission agents, and that it has a general agent at the city of Lansing, and that its commission agents are under similar contracts with the plaintiff to the one set forth in this action.

Seventh. It is agreed and admitted that all contracts are sent to Aultman, Miller & Co., at Akron, Ohio, for approval or rejection, before taking any effect.

Eighth. It is agreed and admitted that the goods sold by Aultman, Miller & Co. in the State of Michigan and manufactured at its factory at Akron, Ohio, are shipped from the factory upon orders received from commission agents, forwarded by the general agent from Lansing to Akron. Goods are shipped either direct to the commission agent or in bulk to Lansing or various points throughout the State and reshipped in smaller lots direct to the commission agent.

Ninth. It is agreed and admitted that Aultman, Miller & Co. own a warehouse in the city of Lansing for the transfer of such shipments, for the temporary storage of a small stock of extras or repairs, which experience has shown may be suddenly needed by customers throughout the State during the harvest season. A portion of the commission agents throughout the State also keep on hand a very small stock of repairs for the immediate use of their customers. These are partially commission goods and partially goods sold direct to them.

25 Tenth. It is agreed and admitted that accounts with every commission agent in the State of Michigan are kept at the office of the plaintiff in Akron, Ohio.

Eleventh. It is agreed and admitted that the plaintiff effects settlement with its commission agents by sending to its general agent copies or statements of all such accounts; that the general agent and his assistant check over the season's work with the commission agent, collect pay for the machines sold in notes or cash, or both, and forward the same direct at once to the plaintiff at Akron, Ohio, and that the notes so taken are subject to the approval or rejection of the plaintiff.

Twelfth. It is agreed and admitted that all notes taken by the commission agents of Aultman, Miller & Co. are sent through its general agent at Lansing to the factory at Akron, Ohio, where they are numbered, recorded, filed, and retained until just before maturity, when they are sent direct to banks or express companies for collection and remittance direct to Akron, Ohio.

F. A. BAKER,  
*Attorney for Plaintiff.*  
WOOD & WOOD,  
*Attorneys for Defendant.*

26 As will be seen, it is agreed and admitted that the balance due the plaintiff from the defendant arising out of the business done by the defendant for the plaintiff at Lansing as its agent, as aforesaid, under the contract referred to, amounted on the 3rd day of November, 1894, to \$5,052.56. The declaration sets forth fully the breaches of contract relied upon by the plaintiff from which this balance arose. The plea of the defendant is the general issue, with notice in accordance with the authorized purpose at law in the courts of Michigan; that the defendant will show under said plea that act No. 182 of the laws of Michigan for the year 1891, as amended by act No. 179 of the laws of Michigan for the year 1893, provides that "every foreign corporation or association which shall

hereafter be permitted to transact business in this State which shall not prior to the passage of this act have filed or recorded its articles of association under the laws of this State and been thereby authorized to do business therein shall pay to the secretary of state the franchise fee of one-half of one mill upon each dollar of the authorized capital stock of such corporation or association and a proportionate fee upon any and each subsequent increase thereof, and that every corporation heretofore organized or doing business in this State, which shall hereafter increase the amount of the capital stock, shall pay a franchise fee of one-half of one mill upon each dollar of such increase of authorized capital stock of such corporation or association and a proportionate fee upon any and each subsequent increase thereof: Provided that the fee herein provided, except in cases of increase of capital stock, shall in no case be less than five dollars; and in case any corporation or association here-

27 after incorporated under the law of this State or foreign corporation authorized to do business in this State has no authorized capital stock, then in such case each and every corporation or association so incorporated or doing business in this State shall pay a franchise fee of five dollars. All contracts made in this State after the first day of January, 1894, by any corporation which has not first complied with the provisions of this act shall be wholly void. This act is ordered to take immediate effect.

Approved May 15th, 1893."

The notice further declares that the contract set forth in plaintiff's declaration, and upon which right of recovery is based, was made and is to be performed in the State of Michigan, within the meaning of the said act; also that said plaintiff, being the foreign corporation, was at the time of the execution of said contract doing business in the State of Michigan within the meaning and application of said statute, and has not complied with the requirements thereof, nor before nor since the passage of such statute has it filed or recorded its articles of association with the secretary of state for the State of Michigan, nor paid to said secretary of state the franchise fee of one-half of one mill upon each dollar of its authorized capital stock; that, owing to plaintiff's non-compliance with said statute, the said contract is absolutely void and without force as against said defendant.

28 SWAN, J.:

The questions arising in this case have been argued with great learning and ability by counsel, and although the discussion has taken a wide range, it has left for determination but two inquiries: 1st. Was the contract sued upon made in this State? 2nd. Is the statute upon which the defense is founded a regulation of commerce obnoxious to the constitutional grant of the power over that subject conferred upon Congress? In regard to the first of these questions, it will be noticed that the provision of the statute upon which reliance is had for the avoidance of the defendant's liability for the sum found due from him to the plaintiff limits its penalty to "con-

tracts made in this State after the first day of January, 1894." This contract was made, it is admitted, after that date. What was the locality of its execution? It did not become a contract until all the parties executed it. By its express provision, it was not to be valid until countersigned by the agent of the plaintiff at Lansing and approved at Akron, Ohio. This latter requisite—the approval of the plaintiff—is the crowning act of its consummation, as expressing the agreement of the parties. It therefore was not made until by plaintiff's approval it was perfected and adopted. Until then it was an imperfect obligation, having no force whatever. The act which gave it vitality was performed outside of the State of Michigan—*i. e.*, in the State of Ohio. It seems clear, therefore, that it was not a contract made in this State within the prohibition of the statute. The question of construction of the language 29 of the statute is analogous of that arising upon the alien labor acts, which have been the subject of much discussion in the Federal courts. In cases founded on those acts a vital element of the offense is the making of a contract in a foreign country with a non-resident alien previous to the immigration or importation of such alien into the United States to perform labor or service in this country, and in pursuance of which such non-resident alien comes to the United States and enters upon the performance of the contract. There, as here, the character of the act is made to depend upon the locality of the execution of the prohibited contract. It is perfectly lawful, notwithstanding the alien labor acts, to contract with an alien within the jurisdiction of the United States.

U. S. v. Craig, 28 F. R., 795, 799.

U. S. v. Edgar, 45 F. R., 44.

S. C. on Error, 48 F. R., 91.

Thus in the Michigan statute no penalty is directed against the execution of a contract outside of the State by a corporation which has not complied with the provisions of the acts of 1891 and 1893.

The inquiry, therefore, is not by what law the contract is to be construed—whether that of the place of its execution or that of its performance—or of the form in which suit may be brought upon it. The single question is, Where was it executed? And upon the admitted facts of this case, evidenced by the stipulation, the concessions of counsel, and the fair construction of the clause "and approved at Akron," but one answer can be given to this inquiry. It became the contract of the parties at Akron, Ohio, and was not made in the State of Michigan, within either the language or the spirit of the act of the legislature pleading in defense.

30 Giving to the language of the act its natural and obvious meaning, the phrase "made in the State of Michigan" can have but one interpretation, and must be held to designate contracts there perfected by the assent of all parties. It is not necessary to invoke the rule that a penal act is to be strictly construed, for the language employed has excluded all doubt of the intent of the legislature. The contract sued upon is not avoided by the act of 1893.

2. Upon the second question, as to the constitutionality of the State statute, there is, in my judgment, as little doubt as upon the first. By the contract sued upon the defendant "is hereby authorized to sell Buckeye mowers, reapers, and binders and extra parts thereof in the following territories, viz: Laingsburg and vicinity and Elsie and vicinity, including the townships of Washington and Elba, in Gratiot county, and Chapin, in Saginaw county, and the west half of Fairfield, in Shiawassee county, for and during the season of 1894." \* \* \*

The defendant, therefore, was not a resident local agent of the plaintiff, and, although selling on commission, was really, as the contract contemplates, nothing more than an itinerant vendor in the territory specified. The fact that the company had a warehouse at Lansing, where it stored its implements and the necessary "repairs" or parts of the machines which it manufactured and sent here for sale, in order that it might meet the demands of those having its machines to supply such repairs or parts, is immaterial in this case. Without doubt, property so stored and kept within the

State of Michigan for the convenience of the company and  
31 the promotion of its business in affording facilities to its customers for the purchase and repair of the implements which it manufactured and sold, unless these were merely in transit for delivery to customers here, would authorize the State to tax such property for the protection it received. But the right to taxation of such property is not in question here. The State statute really imposes a tax upon the corporations included within its provisions for the privilege of selling their wares in Michigan, and therefore is obviously a tax upon interstate commerce within the provisions of the Federal Constitution and the decisions of the Supreme Court of the United States. It is equally so regarded by the supreme court of the State; and in *Coit v. Sutton*, decided in October, 1884, the supreme court of the State of Michigan, in passing upon this very statute, so decided, holding that it imposed a tax "upon the occupation of the corporation, with a provision that all its contracts shall be void until the tax is paid, which if enforced would embarrass plaintiff in its commerce with non-inhabitants of Michigan. It must therefore be held that the act in question does not apply to foreign corporations, whose business within this State consists merely of selling through itinerant agents and delivering commodities manufactured outside of this State." The opinion cites many decisions of the Supreme Court of the United States upon the construction of the commerce clause of the Constitution, which all sustain this conclusion. In addition to these, the cases of—

*Crutcher v. Kentucky*, 141 U. S., 147;

*Brennan v. Titusville*, 153 U. S., 289, and

*Covington Bridge Co. v. Kentucky*, 154 U. S., 204,

32 in which cases the opinions of the court are delivered respectively by Mr. Justice Bradley, Mr. Justice Brewer, and Mr. Justice Brown, review fully the authorities upon this question and render unnecessary any lengthy discussion of the question upon prin-

ciples. The fact that the act of 1893, the Laws of '93, page 82, does not discriminate against foreign corporations does not exempt it from the charge of being an interference with interstate commerce. This point is so fully discussed in several of the cases cited *supra* that it need not here be elaborated. Indeed, the decision of the supreme court of the State of Michigan leaves nothing to be said in support of the statute as applied to this case. There is nothing in the stipulation of facts which takes the case outside of the effect of that decision.

The judgment must be entered for the plaintiff for the sum of \$5,052.56, with interest, at six per cent., from November 3rd, 1894.  
(Signed)

HENRY H. SWAN,  
*District Judge.*

33

*Exceptions.*

United States Circuit Court, Sixth Circuit and Eastern District of Michigan.

AULTMAN, MILLER & COMPANY, Plaintiff, }  
vs.  
WILLIAM HOLDER, Defendant. } No. 8044.

Dated NOVEMBER 25, 1895.

Now comes the said defendant, by Wood & Wood, his attorney, and excepts to the special findings and decisions of the court herefore made and filed in this cause.

First. To the first conclusion of law.

Second. To the second conclusion of law.

Third. To the third conclusion of law.

Fourth. Said defendant says that the findings of fact do not support the conclusions of law.

WOOD & WOOD,  
*Attorney for Defendant.*

Filed in clerk's office November 27, 1895.

WALTER S. HARSHA, *Clerk.*

WOOD & WOOD,  
*Attorneys for Defendant.*

34

*Special Findings.*

UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Eastern District of Michigan.

AULTMAN, MILLER AND COMPANY, Plaintiff, }  
vs.  
WILLIAM HOLDER, Defendants. }

Special findings.

At a session of the said court held on the third day of November,

1894, the issue joined in this cause came on for trial before the Hon. Henry H. Swan, district judge, without a jury, the parties having signed a written stipulation waiving a jury trial, and thereupon said issue was duly tried, argued, and submitted to said district judge, and he was requested by the parties to make a written finding of the facts and law; and afterwards, to wit, on the 13th day of May, 1895, the said district judge announced his conclusions in the case in a written opinion duly filed, reserving the right to make and file a special finding of the facts and the law, if the parties or either of them so desired.

And afterwards, to wit, on this the 3rd day of November, 1895, the said district judge, at the request of said defendant, makes and files the following special findings:

*Findings of Facts.*

First. On the 29th day of April, 1894, the parties of this suit entered into a written contract, a copy of which, marked "copy of contract," is hereinafter set forth. Said contract was executed, accepted, and was approved, as set forth in said contract and 35 in the endorsement on the back thereof.

Second. The provisions of said contract, in so far as plaintiff is concerned, have been fulfilled.

Third. There is a balance due the plaintiff from the defendant under said contract of five thousand and fifty-two and fifty-sixth hundredths dollars (\$5,052.56).

Fourth. Aultman, Miller & Company is a corporation organized and existing under the general laws of Ohio, having its corporation office in the city *in the* of Akron, county of Summit and State of Ohio, and having its manufactory at the same place.

Fifth. Aultman, Miller & Company do not manufacture any goods whatever within the State of Michigan.

Sixth. Aultman, Miller & Co. sells its goods in Michigan by means of local commission agents, and it has a general agent at the city of Lansing, in Michigan, and its commission agent are under similar contracts with the plaintiff to the one set forth in this action.

Seventh. All contracts are sent to Aultman, Miller & Company, at Akron, for approval or rejection before taking any effect.

Eighth. The goods sold by Aultman, Miller & Company in the State of Michigan and manufactured at its factory at Akron, Ohio, are shipped from the factory upon orders received from commission agents, forwarded by the general agent from Lansing to Akron. Goods are shipped either direct to the commission agent or in bulk to Lansing or various points throughout the State and reshipped in smaller lots direct to the commission agent.

Ninth. Aultman, Miller & Co. own a warehouse in the city of Lansing for the transfer of such reshipments for the temporary storage of a small stock of extras or repairs which experience has shown may be suddenly needed by customers

throughout the State during the harvest season. A portion of the commission agents throughout the State also keep on hand a very small stock of repairs for the immediate use of their customers. These are partially commission goods and partially goods sold direct to them.

Tenth. Accounts with every commission agent in the State of Michigan are kept at the office of the plaintiff in Akron, Ohio.

Eleventh. The plaintiff effects settlement with its commission agents by sending to its general agent copies or statements of all such accounts. The general agent and assistant check over the season's work with the commission agent, collect pay for the machines sold in notes or cash or both, and forward the same direct at once to the plaintiff at Akron, Ohio, and the notes so taken are subject to the approval or rejection of the plaintiff.

Twelfth. All notes taken by the commission agents of Aultman, Miller & Company are sent through its general agent at Lansing to the factory at Akron, Ohio, where they are numbered, recorded, filed, and retained until just before maturity, when they are sent direct to the bank or express companies for collection and remittance direct to Akron, Ohio.

Thirteenth. Aultman, Miller & Company has never filed a copy of its articles of association in the office of the secretary of state of the State of Michigan or in any other office in Michigan, nor has said company ever paid any franchise fee to the State of Michigan or in any way complied or attempted to comply with section one of

37 an act of the Michigan legislature entitled "An act to provide for the payment of the franchise fee by corporation," approved July 2, 1891, as amended by act No. 79 of the public acts of Michigan of 1893, approved May 13, 1893 (Public Acts 1891, p. 240; Public Acts 1893, p. 82), and which said section one, as amended, reads as follows:

SECTION 1. The people of the State of Michigan enact, That every corporation or association hereafter incorporated or formed by consolidation or otherwise by or under any general special law of this State which is required by law to file articles of association with the secretary of state and every foreign corporation or association which shall hereafter be permitted to transact business in this State which shall not prior to the passage of this act have filed or recorded its articles of association under the laws of this State, and been thereby authorized to do business therein, shall pay to the secretary of state a franchise fee of one-half of one mill upon each dollar of the authorized capital stock of such corporation or association, and a proportionate fee upon any and each subsequent increase thereof, and that every corporation heretofore organized or doing business in this State which shall hereafter increase the amount of its authorized capital stock shall pay a franchise fee on one-half of one mill upon each dollar of such increase of authorized capital stock of such corporation or association and a proportionate fee upon any and each subsequent increase thereof: Provided that the fee herein provided, except in cases of increase of capital stock, shall in no case be less than five dollars, and in case any corporation or association hereafter in-

corporated under the law on this State, or foreign corporation authorized to do business in this State, has no authorized capital stock, then in such case each and every corporation or association so incorporated or doing business on this State shall pay a franchise fee of five dollars.

38 All contracts made in this State after the first day of January, eighteen hundred and ninety-four, by any corporation which has not first complied with the provision of this act shall be wholly void."

*Copy of Contract.*

This agreement, made this 20th day of February A. D. 1894 between Aultman, Miller & Co. a corporation duly incorporated under the laws of the State of Ohio, of Akron Ohio of the first part and William Holder of Laingsburg, county of Shiawassee, and State of Michigan of the second part witnesseth, That the party of the second part is hereby authorized to sell Buckeye mower, reapers and binders and extra parts thereof in the following territory, viz: Laingsburg and vicinity and Elsie & vicinity including the township of Washington and Elba in Gratiot county, Chapin in Saginaw county and the west half of Fairfield in Shiawassee Co., for and during the season of 1894 on the following terms and conditions viz. The party of the second part agrees:

First. To use all reasonable diligence in canvassing and supplying said territory with said machines and in maintaining their reputation in preference to any other kind of mower and combined mowing and reaping machines and harvesters and binders and not to canvass or solicit orders outside of the above territory.

Second. To sell the said machines at the retail list prices authorized by said first party with freight and charges from Laingsburg added thereto, on the following terms, viz: One-half, October 1, 1894, one-half October 1, 1895. In extreme cases one-third October 1, 1894, one-third October 1, 1895, one-third October 1, 1896, shall be allowed on binders only for which settlement must be made with the purchaser on the delivery of machines, and to grant credit to such persons only as are of well-known responsibility and of good reputation for the payment of their debts, to see that all notes taken for machines sold are drawn on blanks furnished by the said first party and signed by one or more persons of well-known responsibility and in all cases of doubt as to the responsibility of the purchaser to require a mortgage on property real or personal ample sufficient to secure a payment in full of all such notes, all notes to bear interest as 40 specified in the blanks provided by first party and in no instance to run beyond the time above mentioned. And if at any time the party of the first part shall learn that any of the said notes were not signed by persons of well-known responsibility, then the party of the second party agrees to redeem all such notes with accrued interest, in cash or approved notes at the option of the party of the first part.

Third. To endorse with waiver of protest and notice of non-payment all notes given by renters and parties owning no real estate,

unless sufficiently secured by chattel mortgage or otherwise, and all notes which on examination by a banker or other competent authority, chosen by the first party of its general agent are pronounced not good or insufficiently secured.

Fourth. That all machines and parts of machines and all other goods received on commission under this contract shall be held by the said second party on special storage and deposit as the property of the party of the first part until converted into notes or money, as herein provided, which notes are to be received by said second party and held on special deposit as the property of said Aultman, Miller & Co. until forwarded to said Aultman, Miller & Co. or delivered to their authorized agent.

That in all cases — machines are sold for cash or part cash and notes, and such cash received shall be promptly remitted, to Aultman, Miller & Co. Akron Ohio, or their authorized agent, and that any and all sums of money that may in any case become due and owing from said party of the second part to said party of the first part shall be collectible without any relief whatever from valuation or appraisement laws.

41 Fifth. To see that all machines sold are properly set up and started and as far as possible that they give satisfaction to the purchaser and to keep a correct record of sales showing the name and post-office address of each purchaser with price terms and date of sale, said record of sales to be reported to the party of the first part at its request and at all times to be subject to the inspection of its general agent.

Sixth. To receive all machines, extra or other goods shipped or delivered on account of said first party to pay the freight on them, keep them well housed, well cared for, free from taxes and to insure in a reliable company all goods of every nature on hand that belong to the Aultman, Miller & Co. with loss or damage on the same made payable to Aultman, Miller & Co. as their interest may appear, at the time of said loss or damage. To keep all unsold goods well housed and cared for, subject to the order of party of the first party until renewal of this contract or if necessary up to May 1, 1895 and in no case making charge for handling or storing the same, ordinary freight charges in all cases to follow machines and extras reshipped, but no express charges shall follow goods reshipped, nor shall the party of the first part in any case be obliged to pay express charges on goods shipped to the party of the second part.

Seventh. In furnishing repairs free of charge to customers, to do so only when there is a flaw or defect in the original and in all cases of repairs so furnished to have on hand the broken or defective pieces to show at settlement and to deliver the same to

42 the party of the first part, otherwise bills of this kind will not be allowed, and in no case whatever to take from any machine belonging to the first party any part thereof, as extras or repairs, to pay at settlement for all machines on hand, in case of a violation of this clause.

Eighth. To make prompt and accurate reports of machines on hand as often as requested by the first party or its general agent,

to promptly execute orders for transfer of machines, if any are on hand unsold and in case of failure to make such report or transfers to pay said first party for all machines remaining on hand at settlement unsold by reason of such failure, at the option of said first party.

Ninth. To sell or assist in the sale of — other mowing machines, or combined mowing and reaping machines or harvesters and binders in said territory during the continuance of this contract and not to purchase, keep in stock, or offer for sale binding twine, knives, sickles, sections, or other parts of the Buckeye machines manufactured and furnished by any other than the first party.

Tenth. To sell and deliver all machines set up and used as samples, or settle for same in cash or approved notes at settlement time.

Eleventh. To publish a notice of this agency in any one or more newspapers in the above-named territory during the months of April, May and June, without charge to the first party hereto. To receive and pay transportation charges on all advertising matter forwarded by said first party and to see that it is properly distributed among the farmers of the above-described territory.

43 The party of the first part further agrees with the party of the second part:

First. To furnish to said second party such machines of the kinds they make as may be wanted to supply said territory, so long as their stock on hand will enable them to fill the orders. No commission will be allowed on orders taken and not filled nor on machines which have for any cause been returned and in no case shall the party of the second part be entitled to a commission on a sale where the machine has not been delivered and properly set up and started to the satisfaction of the purchaser and settled for. Nor shall any commission whatever be due said second party until a full settlement of account is made and that the said *upon* second party be ready to make settlement on demand of the first party or their authorized agent.

Second. To allow said second party as compensation for receiving, handling, storing, selling, setting up and starting machines and making collections whenever required a commission equal to an amount which deducted from the price for which the machines have been sold after deducting other allowances of every nature, will make the net amount to be *returned* by the first party in notes and cash in the same proportion as taken for machines sold as follows:

Freights allowed.	Width of cut.	If sold for cash.	If sold for notes.
Buckeye light mower one horse....	3 ft. 9 in.	32 00	34 00 each
Buckeye light mower .....	4 ft. 3 in.	33 00	35 00 "
New Buckeye mower.....	4 ft. 6 in.	34 00	36 00 "
New Buckeye mower (t-o combine-). 4 ft. 6 in.			
Buckeye mower.....	5 ft.	35 00	37 00 "
44 Buckeye mower.....	6 ft.	40 00	42 00 "
New Buckeye table rake.....	5 feet 2 in.		

New Buckeye dropper .....	5 feet 2 in.			
Buckeye frameless binder.....	5 "	90 00	90 00	each
Buckeye frameless binder.....	6 "	90 00	95 00	"
Buckeye frameless binder.....	7 "			
Buckeye Banner binder.....	5 3/3 in.	90 00	95 00	"
Buckeye bundle-carrier for binders.....		4 50		"
Buckeye flax and clover dump.....		2 70		"
Buckeye binder truck, two-wheeled.....		6 75		"

Where an outfit consisting of binder, trucks and bundles carrier is sold to one person the net cash price shall be \$95.00 time price \$95.00 for 5-ft. machines and \$95.00 cash or \$100.00 time for 6-ft. machines.

Third. To furnish the said second party a stock of extra casting and other repairs (excepting knives, sickles knife and sickle heels sections rivets guards, canvasses, pitman ferrules, spring keys, brass boxes, chain links, bolts and other net goods), from the prices of which as found in the published price-list a commission of 25 per cent. will be allowed all such extras sold to be paid in cash on demand on the first party to their authorized agent.

Fourth. To sell to said second party knives and sickles, and knives and sickle heels guards sections and rivets at discount of 50 per cent., and pitman ferrules, spring keys brass boxes chains links canvasses bolts and other net goods at a discount of 50 per cent., all to be paid for in cash on or before the first day of August, 1894.

45 Fifth. To furnish said second party blank notes orders circulars and posters and such other printed documents as they are accustomed to supply their agents.

NOTICE.—It is especially agreed that when sales have not been closed by cash or notes on or before delivery as stated above, then the party of the first part may send a person to settle with the purchaser of machines, and the party of the second part shall pay all the expenses of making such settlement. It is further agreed that Aultmen, Miller & Co. shall not be held liable under any written or printed warranty given by them on their machines that are allowed to go out without first having been settled for.

No canvassers or expert that may be sent to aid you shall have any authority to make any charge whatever in our contract with you, and all sales made by him will be subject to your approval or rejection as no allowance will be made to you for loss of interest or reduction in price on sales made by him.

Nor will any promise not authorized in writing by our manager at Lansing, Michigan be recognized at settlement and the first party deserves the right to rescind or annul their contract at any time that the said party of the second part shall violate or neglect to fulfill any of the above stipulations.

In witness whereof, the parties of hereunto have set their hands this day and date above written.

AULTMAN, MILLER & CO.,  
By D. C. GILLETT.

This contract not valid unless countersigned by our manager at Lansing, Mich., and app. at Akron.

WM. HOLDER.

Countersigned, Lansing, Mich., Feb. 27, 1894.

R. H. WORTH, *Manager.*

Across the back of said contract are the words:

46      Approved April 29th, 1894. Ira M. Miller, secretary.

*Findings of Law.*

On the above and foregoing finding of facts the court finds the following conclusions or findings of law:

1. The business of Aultman, Miller & Co. as carried on under and in pursuance of the said contract is an interstate-commerce business, and said company is not subject to section one of the Michigan franchise-fee act of 1891, as amended by act No 79 of the public act of Michigan of 1883, and said last-named act is, so far as it applies or purports to apply to foreign corporations like Aultman, Miller & Co., which are doing in Michigan an interstate-commerce business, is in conflict with the provision of the Constitution of the United States authorizing Congress to regulate commerce with foreign nations and among the several States and with the Indian tribes.

2. Said contract was made and executed in the State of Ohio and is an Ohio contract, and it does not provide for the transaction of any business in Michigan other than an interstate-commerce business, and the plaintiff is therefore within the protection of the Constitution of the United States.

3. Upon the facts found the plaintiff is entitled to recover the sum of \$5,052.56, with interest, at six per cent., from Nov. 3, 1894, and a judgment will therefore be entered in favor of the plaintiff and against the defendant for \$5,212.56 and costs of suit, to be taxed.

HENRY H. SWAN,  
*District Judge.*

Filed in clerk's office Nov. 2, 1895.

WALTER S. HARSHA, *Clerk.*

*Exceptions.*

United States Circuit Court, Sixth Circuit, and Eastern District of Michigan.

AULTMAN, MILLER & COMPANY, Plaintiff, }  
vs.  
WILLIAM HOLDER, Defendant.      }

Dated AUGUST 23, 1895.

Now comes the said defendant, by Wood & Wood, his attorney, and excepts to the finding and decision of the court heretofore made

and filed in this cause, and for cause of exceptions alleges that the same was erroneous for the reasons :

1. That the court erred in holding that the contract upon which the action was based was made in the State of Ohio.
2. That the court erred in holding that the defendant was not a resident local agent of the plaintiff, but was an itinerant vender.
3. That the court erred in holding that the statute of the State of Michigan imposes a tax upon the corporation- included within its provision- for the privileges of selling their wares in Michigan, and is therefore a tax upon interstate commerce within the provision- of the Federal Constitution.
4. That the court erred in entering judgment for the plaintiff and against the defendant.

WOOD & WOOD,  
*Attorney for Defendant.*

Filed in clerk's office Oct. 31, 1895.

WALTER S. HARSHA, *Clerk.*

48

*Stipulations of Facts.*

UNITED STATES OF AMERICA :

The Circuit Court of the United States for the Sixth Circuit and Eastern District of Michigan.

AULTMAN, MILLER & COMPANY, a Corporation, Plaintiff,  
vs.  
WILLIAM HOLDER, Defendant. } }

To said court :

It is agreed between the parties to the above action that the following facts are agreed upon without submission of evidence, and the parties ask that this stipulation of facts be made a part of the record :

First. It is agreed that the contract referred to between the parties was executed, accepted, and approved as set forth in said contract.

Second. It is agreed that the provision- of the contract, in so far as plaintiff is concerned, have been fulfilled.

Third. It is agreed that the balance due, amounting to five thousand and fifty-two and fifty-six hundredth- dollars (\$5,052.56), is correct.

Fourth. It is agreed and admitted that Aultman, Miller & Co. is a corporation organized and existing under the general laws of Ohio, having its corporate office in the city of Akron, county of Summit and State of Ohio, and having its manufactory at the same place.

49 Fifth. It is agreed and admitted that Aultman, Miller & Co. does not manufacture any goods whatever within the State of Michigan.

Sixth. It is agreed that Aultman, Miller & Co. sells its goods by means of local commission agents, and that it has a general agent at the city of Lansing, and that its commission agents are under similar contracts with the plaintiff to the one set forth in this contract.

Seventh. It is agreed and admitted that all contracts are sent Aultman, Miller & Co., at Akron, Ohio, for approval or rejection, before taking any effect.

Eighth. It is agreed and admitted that the goods sold by Aultman, Miller & Co. in the State of Michigan and manufacturers at its factory at Akron, Ohio, are shipped from the factory upon orders received from commission agent, forwarded by the general agent from Lansing to Akron. Goods are shipped either direct to the commission agent or in bulk to Lansing or various points throughout the State and reshipped in smaller lots direct to the commission agent.

Ninth. It is agreed and admitted that Aultman, Miller & Co. own a warehouse in the city of Lansing for transfer of such re-shipment, for the temporary storage of a small stock of extras or repairs, which experience has shown may be suddenly needed by customers throughout the State during the harvest season. A portion of the commission agents throughout the State also keep on hand a very small stock of repairs for the immediate use of their customers. These are partially commission goods and partially goods sold direct to them.

Tenth. It is agreed and admitted that accounts with every commission agent in the State of Michigan are kept at the office of the plaintiff in Akron, Ohio.

Eleventh. It is agreed and admitted that the plaintiff effects settlement with its commission agents by sending to its general agent 50 copies or statements of all such accounts; that the general agent and his assistants check over the season's work with the commission agent, collect pay for the machines sold in notes or cash, or both, and forward the same direct at once to the plaintiff at Akron, Ohio, and that the notes so taken are subject to the approval of rejection of the plaintiff.

Twelfth. It is agreed and admitted that all notes taken by the commission agents of Aultman, Miller & Co. are sent through its general agent at Lansing to the factory at Akron, Ohio, where they are numbered, recorded, filed, and retained until just before maturity, when they are sent direct to banks or express companies for collection and remittance direct to Akron, Ohio.

F. A. BAKER,  
*Attorney for Plaintiff.*  
WOOD & WOOD,  
*Attorneys for Defendants.*

Filed in clerk's office Nov. 3, 1894.

WALTER S. HARSHA, *Clerk.*

*Commission Contract with Aultman, Miller & Co.*

This agreement, made this 20th day of February A. D. 1894 between Aultman, Miller & Company (a corporation duly incorporated under the laws of the State of Ohio) of Akron Ohio of the first part and Wm. Holder of Laingsburg county of Shiawassee, and State of Michigan of the second part, witnesseth, That the party of the second part is hereby authorized to sell Buckeye mowers, reapers and binders and extra parts thereof in the following territory, viz. Laingsburg and vicinity and Elsie and vicinity, including the township of Washington & Elba in Gratiot county, Chapin in Saginaw Co. and the west half of Fairfield in Shiawassee Co. for and during the season of 1894 on the following terms and conditions viz. The party of the second part agrees:

First. To use all reasonable diligence in canvassing and supplying said territory with said machines and in maintaining their reputation in preference to any other kind of mowers and combined mowers and reaping machines and harvesters and binders and not to canvass or solicit orders outside of the above territory.

Second. To sell the said machines at the retail list prices authorized by said first party with freight and charges from Laingsburg added thereto on the following terms viz. One-half October 1, 1894 one-half October 1, 1895. In extreme cases one-third October 1, 1894 one-third October 1, 1895, one-third October 1, 1896, shall be allowed on binders only for which settlement must be made with the purchaser on the delivery of machines, and to grant credit to such persons only as are — well-known responsibility and of good reputation for the payment of their debts to see that all notes taken for machines sold are drawn on blanks furnished by the said first party and signed by one or more persons of well-known responsibility and in all cases of doubt as to the responsibility of the purchaser to require a mortgage on property real or personal, ample sufficient to secure

52 payment in full of all such notes all notes to bear interest as specified in the blanks provided by first party and in no instance to run beyond the time above mentioned. And if at any time the party of the first part shall learn that any of said notes were not signed by persons of well-known responsibility then the party of the second part agrees to redeem all such notes with accrued interest in cash or approved notes at the option of the party of the first part.

Third. To endorse with waiver of protest and notice of non-payment, all notes given by renters and parties owning no real estate, unless sufficiently secured by chattel mortgage or otherwise, and all notes which on examination by bankers or other competent authority, chosen by the first party or its general agent are pronounced not good or insufficiently secured.

Fourth. That all machines and parts of machines and all other goods received on commission under this contract shall be held by the said second party on special storage and deposit as the property of the party of the first part, until converted into notes or money, as herein provided, which notes are to be received by said second

party and held on special deposit as the property of said Aultman Miller & Co. until forwarded to said Aultman, Miller & Co., or delivered to their authorized agent. That in all cases where machines are sold for cash or part cash and notes, all such cash received shall be promptly remitted to Aultman, Miller & Co. Akron Ohio or their authorized agent and that any and all sums of money that may in any case become due and owing from said party of the second part to said party of the first part shall be collected without any relief whatever from valuation or appraisement laws.

53 Fifth. To see that all machines sold are properly set up and started and as far as possible that they give satisfaction to the purchaser and to keep a correct record of sales, showing the name and post-office address of each purchaser with price terms and date of sale, said record of sales to be reported to the party of the first part at its request, and at all times to be subject to the inspection of its general agent.

Sixth. To receive all machines, extras or other goods shipped or delivered on account of said first party to pay the freight on them, keep them well housed well cared for free from taxes and to insure in a reliable company all goods of every nature on hand that belong to Aultman, Miller & Co. with loss or damage on the same made payable to Aultman, Miller & Co. as their interest in said property may appear at the time of said loss or damage. To keep all unsold goods well housed and cared for, subject to the order of the party of the first part until renewal of this contract or if necessary up to May 1, 1895, and in no case making charges for handling or storing the same, ordinary freight charges in all cases to follow machines and extras reshipped but no express charges shall follow goods shipped, nor shall the party of the first part in any case be obliged to pay express charges on goods shipped to the party of the second part.

Seventh. In furnishing repairs free of charge to customers to do so only when there is a flaw or defect in the original and in all cases of repairs so furnished, to have on hand the broken or defective pieces to show at settlement and to deliver the same to the party of the first part, otherwise bills of this kind will not be allowed and in no case whatever to take from any machine belonging to the first party any part thereof, as extras or repairs, to pay at settlement for all machines on hand, in case of a violation of this clause.

54 Eighth. To make prompt and accurate reports of machines on hand as often as requested by the first party or its general agent, to promptly execute orders for transfer of machines, if any are on hand unsold, and in case of failure to make such reports or transfers to pay said first party for all machines remaining on hand at settlement, unsold by reason of such failure at the option of said first party.

Ninth. To sell or assist in the sale of no other mowing machines or combined mowing and reaping machines or harvesters and binders, in said territory during the continuance of this contract and not to purchase keep in stock of offer for sale binding twine, knives, sickles, sections or other parts of the Buckeye machines manufactured and furnished by any other than the first party.

Tenth. To sell and deliver all machines set up and used as samples, or settle for same in cash or approved notes at settlement time.

Eleventh. To publish a notice of this agency in one or more newspapers in the above-named territory during the months of April, May, and June without charge to the first party hereto. To receive and pay transportation charges on all advertising matter forwarded by said first party and to see that it is properly distributed among the farmers of the above-described territory.

The party of the first part further agrees with the party of the second part:

First. To furnish to said second party such machines of the kind they make as may be wanted to supply said territory, so long as their stock on hand will enable them to fill the orders. No commission will be allowed on orders taken and not filled nor on machines which have for any cause been returned and in no case shall the party of the second part be entitled to a commission on a 55 sale where the machine has not been delivered and properly set up and started to the satisfaction of the purchaser and settled for. Nor shall any commission whatever be due said second party until a full settlement of account is made, and that the said second party be ready to make settlement on demand of the first party or their authorized agent.

Second. To allow said second party a compensation for receiving handling, storing, selling, setting up, and starting machines, and making collections whenever required, a commission equal to an amount which deducted from the price for which the machines have been sold after deducting other allowances of every nature, will make the net amount to be retained by the said first party in notes and cash in the same proportion as taken for machines sold as follows:

Freight allowed.	Width of cut.	If sold for cash.	If sold for notes.
Buckeye light mower (one horse)....	3 ft. 9 in.	32 00	34 00 "
Buckeye light mower .....	4 " 3 "	33 00	35 00 "
New Buckeye mower.....	4 " 6 "	34 00	36 00 "
New Buckeye mower (combine)....	4 " 6 "		
Buckeye mower .....	5 "	35 00	37 00 "
Buckeye mower .....	6 "	40 00	42 00 "
New Buckeye table rake .....	5 " 2 in.		
New Buckeye dropper.....	5 " 2 "		
Buckeye frameless binder .....	5 "	90 00	90 00 "
Buckeye frameless binder .....	6 "	90 00	95 00 "
Buckeye frameless binder.....	7 "		
Buckeye Banner binder .....	5 " 3 in.	90 00	95 00 "
Buckeye bundle-carrier for binder.....		4 50	
Buckeye flax and clover dump.....		2 70	
Buckeye binder truck, two-wheeled.....		6 75	

Where an outfit consisting of binder, trucks, & bundle-carrier is sold to one person, the net cash price shall be \$95.00. Time price

\$95.00 for 5-ft. machines and \$95.00 cash or \$100.00 time for 6-ft. machines.

56 Third. To furnish the said second party a stock of extra castings and other repairs (excepting knives, sickles, knife and sickle heels, sections, rivets, guards, canvasses pitman ferrules spring keys, brass boxes chain links, bolts and other net goods), from the prices of which as found in the published prices-list a commission of 25 per cent. will be allowed all such extras sold to be paid for in cash on demand of the first party or their authorized agent.

Fourth. To sell to said second party knives and sickles and knife and sickle heels, guards, sections and rivets at a discount of 50 per cent. and pitman ferrules spring keys brass boxes chain links canvasses bolts and other net goods at a discount of 50 per cent. all to be paid for in cash on or before the first day of August 1894.

Fifth. To furnish said second party blank notes, orders, circulars, and posters and such other printed documents as they are accustomed to supply their agents.

NOTICE.—It is especially agreed that when sales have not been closed by cash or notes on or before delivery as stated above then the party of the first part may send a person to settle with the purchasers of machines and the party of the second part shall pay all the expenses of making such settlement. It is further agreed that Aultman, Miller & Co. shall not be held liable under any written or printed warranty given by them on their machines that are allowed to go out without first having been settled for.

No canvassers or expert that may be sent to aid you shall have any authority to make any change whatever in our contract with you, and all sales made by him will be subject to your approval or rejection as no allowance will be made to you for loss of interest or reduction in price on sales made by him; nor will any promise not authorized in writing by our manager at Lansing Mich. be recognized at settlement and the first party reserves the right to rescind or annul this contract at any time that the said party of the second part shall violate or neglect to fulfill any of the above stipulations.

57 In witness whereof, the parties hereunto have set their hands the day and date above written.

AULTMAN, MILLER & CO.,  
By D. C. GILLETT.

This contract not valid unless countersigned by our manager at Lansing, Mich., and approved at Akron, Ohio.

WM. HOLDER.

R. H. WORTH, *Manager.*

For the sum of one dollar to me in hand paid and for other and valuable consideration, the receipt of which from Aultman, Miller & Co. is hereby acknowledged, I hereby guarantee to them the faithful performance of the within contract, and acknowledge myself personally bound for the payment on demand of all obligations

arising under said contract on the part of the said party of the second part.

Dated — —, 1894.

Witness:

*Special Notice to General Agents.*—Make all contracts in triplicate. Mail the original to the home office, leave one copy with the local agent, and retain one copy for your files.

58

*Names of Individual Copartners.*

.....  
.....

*Order for Printed Matter.*

In ordering printed matter, if only English print is wanted write the word all in proper blank. If other kinds are wanted, fill blanks with fractions. For example,  $\frac{1}{2}$  English,  $\frac{1}{4}$  German,  $\frac{1}{8}$  Swedish,  $\frac{1}{8}$  Bohemian.

All English.	Bohemian.
German.	Spanish.
Norwegian.	Swedish.

Supply (see note below) "A."

**NOTE.**—In class-fying agencies for the purpose of enabling the home office to decide how large a supply of print should be sent, the general agent should consider not merely the extent and character of the territory, but also the activity of the agents and their appreciation of the value of printed matter well distributed. Mark the supply as follows:

"A" very large, "B" large, "C" medium, "D" small, "E" very small.

59

Duplicate.

1894.

Wm. Holder; P. O., Laingsburg, Shiawassee county, State of Michigan; February 20th, 1894.

Commission contract with Aultman, Miller & Co., Akron, Ohio.

Freight station, Laingsburg; express office, do.

Fill out the order for printed matter on the back of contract.

General agent, D. C. Gillett.

File all blanks.

Approved April 27th, 1894.

IRA MILLER, Sec.

60

*Petition for Writ of Error.*

UNITED STATES OF AMERICA :

In the Supreme Court.

AULTMAN, MILLER & COMPANY, Plaintiff, }  
vs.  
WILLIAM HOLDER, Defendant. }

To the supreme court:

Your petitioner, William Holder, of Lansing, Michigan, respectfully shows to the court that he is the same person who is named as defendant in the above-entitled cause in a suit lately prosecuted against him by the above-named plaintiff in the circuit court of the United States for the sixth circuit and eastern district of Michigan; that such proceedings were had in said cause that on the second day of November, 1895, a judgment was duly entered in said court in favor of the said plaintiff and against your petitioner for the sum of five thousand fifty-two and  $\frac{5}{6}$  dollars, with interest at six per cent. from November 3, 1894, together with costs of the plaintiff, to be taxed. Upon the trial of the said cause plaintiff relied upon a certain contract made between the plaintiff and the defendant, and your petitioner, while admitting the contract, claimed that the same was void for the reason that the plaintiff had not complied with the provisions of act number 79 of the public acts of the State of Michigan, entitled "An act to amend section one of number 182 of the public acts of 1891, entitled 'An act to provide for the payment of a franchise fee by corporations, approved July 2, 1891,' approved May 13, 1893;" and the said plaintiff, while admitting that it had not complied with said act, contended that said act was invalid, as in contravention of the Constitution of the United States relating to commerce between the several States.

61 Your petitioner further shows that the judgment of said court was against the validity of the said statute, on the ground that the same was in contravention of the Constitution of the United States relating to commerce between the several States. A copy of the special findings of the judge who tried the cause is hereto annexed, marked "A"; also a copy of the declaration and of the plea in said cause, marked respectively "B" and "C"; and your petitioner, feeling aggrieved by the said special findings and judgment, has duly excepted thereto, and desires to have the same reviewed on the writ of error by the Supreme Court of the United States.

Wherefore he prays that a writ of error may issue to the said circuit court of the United States for the sixth circuit and eastern district of Michigan in accordance with the rules and practice of the court in such cases.

And your petitioner will ever pray, etc.

WILLIAM HOLDER.

WOOD & WOOD,  
*Att'ys for Defendant.*

62 STATE OF MICHIGAN,  
*County of Ingham,* } ss:

On this 25th day of November, 1895, before me, a notary public in and for the said county of Ingham, personally appeared William Holder, to me known to be the individual who executed the foregoing petition, and then and there acknowledged that he had executed the same.

[Notarial Seal of F. E. Church, Ingham County, Mich.]

F. E. CHURCH,  
*Notary Public in and for Ingham Co.*

STATE OF MICHIGAN,  
*County of Ingham,* } ss:

William Holder, being duly sworn, deposes and says that he is the above-named petitioner, and that the foregoing petition is true to his own knowledge except as to matters therein stated to be upon information and belief, and as to those matters he believes it to be true.

WILLIAM HOLDER.

Subscribed and sworn to before me this 25th day of November, A. D. 1895.

[Notarial Seal of F. E. Church, Ingham County, Mich.]

F. E. CHURCH,  
*Notary Public in & for Ingham Co., Mich.*

63

"B."

UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Eastern District of Michigan.

EASTERN DISTRICT OF MICHIGAN, ss:

Aultman, Miller & Co., a manufacturing corporation organized and existing under the laws of the State of Ohio, and who is a citizen of the State of Ohio, by Fred. A. Baker, its attorney, complains of William Holder, a resident of the village of Laingsburg, in the county of Shiawassee, in the eastern district of Michigan, and who is a citizen of the State of Michigan, the defendant herein, in a plea of trespass on the case upon promises, filing this declaration as commencement of suit, etc.

For that whereas, heretofore, to wit, on the 1st day of January, 1894, the said plaintiff was a corporation organized under the laws of the State of Ohio for the purpose of engaging in the business of manufacturing agricultural implements and machinery, with its manufacturing establishment and its office for doing business located at the city of Akron, in the county of Summit, in the State of Ohio, and the authorized and actual capital stock of said corporation being

one million of dollars, to wit, at the city of Lansing, in said eastern district of Michigan;

And whereas, afterwards, to wit, on the 27th day of February, at the said village of Laingsburg and at the city of Lansing, in the eastern district of Michigan, the said plaintiff, by D. C. Gillett and R. H. Worth, its duly authorized agents, entered into a written contract with the defendant, William Holder, in the words and figures following—that is to say :

64 This agreement, made this 20th day of February A. D. 1894, between Aultman, Miller & Co., (a corporation duly incorporated under the laws of the State of Ohio), of Akron, Ohio, of the first part, and William Holder of Laingsburg, county of Shiawassee and State of Michigan, of the second part, witnesseth: That the party of the second part is hereby authorized to sell Buckeye mowers, reapers and binders, and extra parts thereof, in the following territory, viz: Laingsburg and vicinity and Elsie and vicinity including the townships of Washington & Elba in Gratiot county, Chapin in Saginaw county and the west half of Fairfield in Shiawassee county for and during the season of 1894, on the following terms and conditions, viz: The party of the second part agrees:

First. To use all reasonable diligence in canvassing and supplying said territory with said machines, and in maintaining their reputation in preference to any other kind of mowers and combined mowing and reaping machines, and harvesters and binders, and not to canvass or solicit orders outside of the above territory.

Second. To sell the said machine at the retail price-list authorized by said first party, with freight and charges from Laingsburg added thereto, on the following terms, viz: One-half October 1, 1894 one-half October 1st, 1895. In extreme — one-third October 1, 1894, one-third October 1, 1895, one-third October 1, 1896, shall be allowed on binders only, for which settlement must be made with the purchaser on the delivery of machines; and to grant credit to such persons only as are of well-known responsibility and of good reputation for the payment of their debts; to see that all notes taken for machines sold are drawn on blanks furnished by the said first party, and signed by one or more persons of well-known responsibility; and in all cases of doubt as to the responsibility of the purchaser, to require a mortgage on property, real or personal, amply sufficient to secure

65 a payment in full of all such notes; all notes to bear interest as specified in the blanks provided by first party, and in no instance to run beyond the time above mentioned. And if at any time the party of the first part shall learn that any of the said notes were not signed by persons of well-known responsibility, then the party of the second part agrees to redeem all such notes with accrued interest, in cash or approved notes at the option of the party of the first part.

Third. To endorse with waiver of protest and notice of non-payment, all notes given by renters, and parties owning no real estate, unless sufficiently secured by chattel mortgage or otherwise, and all notes which on examination by banker, or other competent au-

thority, chosen by the first party or its general agent, are pronounced not good or insufficiently secured.

Fourth. That all machines and parts of machines, and all other goods received on commission under this contract, shall be held by the said second party on special storage and deposit as the property of the party of the first part, until converted into notes or money, as herein provided, which notes are to be received by said second party and held on special deposit as the property of said Aultman, Miller & Co., until forwarded to said Aultman, Miller & Co., or delivered to their authorized agent. That in all cases where machines are sold for cash or part cash and notes, all such cash received shall be promptly remitted to Aultman, Miller & Co., Akron, Ohio, or their authorized agent, and that any and all sums of money that may in any case become due and owing from said party of the second part, to the said party of the first part, shall be collectable without any relief whatever from valuation or appraisement laws.

66 Fifth. To see that all machines sold are properly set up and started, and, as far as possible, that they give satisfaction to the purchaser; and to keep a correct record of sales, showing the name and post-office address of each purchaser, with price, terms and date of sale; said record of sales to be reported to the party of the first part at its request, and at all times to be subject to the inspection of its general agent.

Sixth. To receive all machines, extras or other goods shipped or delivered on account of said first party; to pay the freight on them, keep them well housed, well cared for, free from taxes, and to insure in a reliable company all goods of every nature on hand that belong to Aultman, Miller & Co., with loss or damage on the same made payable to Aultman, Miller & Co., as their interest in said property may appear, at the time of said loss or damage. To keep all unsold goods well housed and cared for, subject to the order of party of the first part until renewal of this contract, or if necessary up to May 1, 1895, and in no case making charge for handling or storing the same; ordinary freight charges in all cases to follow machines and extras reshipped; but no express charges shall follow goods reshipped, nor shall the party of the first part in any case be obliged to pay express charges on goods shipped to the party of the second part.

Seventh. In furnishing repairs free of charge to customers, to do so only when there is a flaw or defect in the original, and in all cases of repairs so furnished, to have on hand the broken or defective pieces to show at settlement, and to deliver the same to the party of the first part, otherwise bills of this kind will not be allowed; and in no case whatever to take from any machine belonging to the first party any part thereof as extras or repairs; to pay at settlement for all machines on hand, in case of a violation of this clause.

67 Eighth. To make — and accurate reports of machines on hand as often — requested by the first party or its general agent; to promptly execute orders for transfer of machines, if any are on hand unsold; and in case of failure to make such reports or transfers, to pay said first party for all machines remaining on hand at

settlement, unsold by reason of such failure, at the option of said first party.

Ninth. To sell or assist in the sale of no other mowing machines, or combined mowing and reaping machines, or harvesters and binders, in said territory, during the continuance of this contract, and not to purchase, keep in stock or offer for sale binding twine, knives, sickles, sections, or other parts of the Buckeye machines manufactured and furnished by any other than the first party.

Tenth. To sell and deliver all machines set up and used as samples, or settle for same in cash or approved notes at settlement time.

Eleventh. To publish a notice of this agency in any one or more newspapers in the above-named territory during the months of April May and June, without charge to the first party hereto. To receive and pay transportation charges on all advertising matter forwarded by said first party, and to see that it is properly distributed among the farmers of the above-described territory.

The party of the first part further agrees with the party of the second part:

First. To furnish said second party such machines of the kind they make as may be wanted to supply said territory, so long as their stock on hand will enable them to fill the orders. No com-

mission will be allowed on orders taken and not filled nor  
68 on machines which have for any cause been returned, and in no case shall the party of the second part be entitled to a commission on a sale where the machine has not been delivered and properly set up and started to the satisfaction of the purchaser and settled for. Nor shall any commission whatever, be due said second party until a full settlement of account is made; and that the said second party be ready to make settlement on demand of the first party or their authorized agent.

Second. To allow said second party as compensation for receiving, handling, storing, selling, setting up and starting machines, and making collections, whenever required, a commission equal to an amount which, deducted from the price for which the machines have been sold, after deducting other allowances of every nature, will make the net amount to be retained by the said first party in notes and cash in the same proportion as taken for machines sold as follows:

Freights allowed.	Width of cut.	If sold for cash.	If sold for notes.
Buckeye light mower (one horse) . . . . .	3 ft. 9 in.	\$32 00	\$34 00
Buckeye light mower . . . . .	4 " 3 in.	33 00	35 00
New Buckeye mower . . . . .	4 " 6 in.	34 00	36 00
New Buckeye mower (t-o combine-) . . . . .	4 " 6 in.		
Buckeye mower . . . . .	5 "	35 00	37 00
Buckeye mower . . . . .	6 "	40 00	42 00
New Buckeye table rake . . . . .	5 " 2 in.		
New Buckeye dropper . . . . .	5 " 2 in.		
Buckeye frameless binder . . . . .	5 "	90 00	90 00
Buckeye frameless binder . . . . .	6 "	90 00	95 00
Buckeye frameless binder . . . . .	7 "		

Buckeye Banner binder .....	5 ft. 3 in.	90 00	950 00
	Buckeye bundle-carrier for binder.....	4 50	
69	Buckeye flax and clover dump.....	2 70	each
	Buckeye binder truck, two-wheeled.....	6 75	"

Where an outfit consisting of binder, trucks, and bundle-carrier is sold to one person the net cash price shall be \$95.00. Time price \$95.00 for 5-ft. machines and \$95.00 cash or \$100.00 time for 6-ft. machines.

Third. To furnish the said second party a stock of extra castings and other repairs (excepting knives, sickles, knife and sickle heels, sections, rivets, guards, canvasses, pitman ferrules, spring keys, brass boxes, chain links, bolts and other net goods), from the prices of which as found in the published price-list, a commission of 25% *per cent.* will be allowed; all such extras sold to be paid for cash on demand of the first party or their authorized agent.

Fourth. To sell to said second party knives and sickles, and knives and sickle heels, guards, sections and rivets, at a discount of 50 per cent., and pitman ferrules, spring keys, brass boxes, chain links, canvasses, bolts and other net goods, at a discount of 50 per cent., all to be paid for in cash on or before the first day of August 1894.

Fifth. To furnish said second party blank notes, orders, circulars and posters, and such other printed documents as they are accustomed to supply their agents.

NOTICE.—It is especially agreed that when sales have not been closed by cash or notes on or before delivery as stated above, then the party of the first part may send a person to settle with the purchasers of machines, and the party of the second part shall pay all the expenses of making such settlements. It is further agreed that Aultman, Miller & Co. shall not be held liable under any written or printed warranty given by them on their machines that are allowed to go out without first having been settled for.

70 No canvasser or expert that may be sent to aid you shall have any authority to make any change whatever in our contract with you, and all sales made by him will be subject to your approval or rejection, as no allowance will be made to you for loss of interest or reduction in price on sales made by him; nor will any promise not authorized in writing by our manager at Lansing, Mich., be recognized at settlement, and the first party reserves the right to rescind or annul this contract at any time that the said party of the second part shall violate or neglect to fulfill any of the above stipulations.

In witness whereof, the parties hereunto have set their hands the day and date above written.

AULTMAN, MILLER & CO.,  
By D. C. GILLETT.  
WM. HOLDER.

This contract not valid unless countersigned by our manager at Lansing, Mich.

App. at Akron.

Countersigned, Lansing, Mich., Feb. 27, 1894.

R. H. WORTH, *Manager.*

And whereas, afterwards, to wit, on the 27th day of April, 1894, the said written contract was approved by the plaintiff at its office in the city of Akron, in the State of Ohio, and the same then and there became and was a binding and valid contract between the defendant and the plaintiff, according to the terms thereof, to wit, at the city of Lansing, in the eastern district of Michigan.

And the plaintiff avers that it faithfully performed said contract on its part, and between, to wit, the 27th day of February, 1894, and the 1st day of September, 1894, under and in pursuance of

71 said contract and at the request of said defendant, it shipped from Akron, Ohio, to said defendant at Laingsburg, Michigan, a large number of Buckeye mowers and reapers and binders and extra parts or repaires for the same, to wit, 100 Buckeye mowers and 100 Buckeye reapers and binders and 200 extra castings, parts, and repairs, all of great value and price, to wit, of the value and price of ten thousand dollars, to wit, at Laingsburg, in the eastern district of Michigan.

And the plaintiff further avers that on and between the dates last aforesaid the said mowers and reapers and binders and the said extras were received by the said defendant under and in pursuance of said contract, and the samme were sold and disposed of by him to divers farmers and customers in the townships named in said contract, and that on, to wit, the first dat of September, 1894, there was due and owing to the plaintiff for and on account of the sales so made by him under said contract a large sum of money, to wit, the sum of five thousand and fifty-two and  $\frac{56}{100}$  dollars, and which sum of money the said defendant then and there promised to pay to the plaintiff on demand; yet the said defendant hath disregarded his said promise and hath not, although often requested so to do, paid the said sum money or any part thereof to the plaintiff, to wit, at Laingsburg, in said eastern district of Michigan.

72

"C."

UNITED STATES OF AMERICA:

The Circuit Court for the United States for the 6th Circuit and Eastern District of Michigan.

AULTMAN, MILLER & Co. (a Corporation), Plaintiff,  
vs.  
WILLIAM HOLDER, Defendant.      }

And now comes defendant, William Holder, by his attorneys, Wood &amp; Wood, and demands a trial of the matters set forth in plaintiff's declaration.

Yours, etc.,

WOOD & WOOD,  
Atty's for Defendant.

To Fred. A. Baker, attorney for plaintiff:

Please to take notice that on the trial of said cause defendant will show, under the general issue above pleaded:

First. That said plaintiff is a foreign corporation, organized and existing under the laws of the State of Ohio, and having its principal and corporate office in the city of Akron, in said State.

Second. That act No. 182 of the laws of Michigan for the year one thousand eight hundred and ninety-one, as amended by act No. 79 of the laws of Michigan for the year one thousand eight hundred and ninety-three, provides that "every foreign corporation or association which shall hereafter be permitted to transact business in this State which shall not, prior to the passage of this act, have filed or recorded its articles of association under the laws of this

State and been thereby authorized to do business therein shall 73 pay to the secretary of state a franchise fee of one-half of one mill upon each dollar of the authorized capital stock of such corporation or association and a proportionate fee upon any and each subsequent increase thereof, and that every corporation here-tofore organized or doing business in this State, which shall hereafter increase the amount of its authorized capital stock, shall pay a franchise fee of one-half of one mill upon each dollar of such increase of authorized capital stock of such corporation or association and a proportionate fee upon any and each subsequent increase thereof: Provided, that the fee herein provided, except in cases of increase of capital stock, shall in no case be less than five dollars; and in case any corporation or association hereafter incorporated under the law of this State or foreign corporation authorized to do business in this State has no authorized capital stock, then in each case each and every corporation or association so incorporated or doing business in this State shall pay a franchise fee of five dollars. All contracts made in this State after the first day of January, eighteen hundred — ninety-four, by any corporation which has not first complied with the provisions of this act shall be wholly void.

This act is ordered to take immediate effect.

Approved May 13, 1893."

Third. That the contract set forth in plaintiff's declaration and upon which right of recovery is based was made and is to be performed in the State of Michigan within the meaning of the said act.

Fourth. That said plaintiff, being a foreign corporation, was at the time of the execution of said contract doing business in the State of Michigan within the meaning and application of said statute.

Fifth. That the plaintiff has not complied with the requirements of said statute; that neither prior nor subsequent to the passage of said statute has it filed or recorded its articles of association with the secretary of state — the franchise fee of one-half of one mill upon each dollar of its authorized capital stock.

Sixth. That owing to plaintiff's non-compliance with said Michigan statute the said contract is absolutely void and without force as against defendant.

Yours, etc.,

WOOD & WOOD,  
Att'ys for Defendant.

UNITED STATES OF AMERICA :

The Circuit Court of the United States for the Eastern District of Michigan.

AULTMAN, MILLER & COMPANY, Plaintiff, }  
vs.  
WILLIAM HOLDER, Defendant. }

*Special Findings.*

At a session of said court held on the 3rd day of November, 1894, the issue joined in this cause came on for trial before the Hon. Henry H. Swan, district judge, without a jury, the parties having signed a written stipulation waiving a jury trial, and thereupon said issue was duly tried, argued, and submitted to said district judge, and he was requested by the parties to make a written finding of the facts and law; and afterwards, to wit, on the 13th day of May, 1895, the said district judge announced his conclusions in the case in a written opinion duly filed, reserving the right to make and file a special finding of the facts and the law, if the parties or either of them so desired.

And afterwards, to wit, on this the 2nd day of November, 1895, the said district judge, at the request of said defendant, makes and files the following special findings :

*Finding of Facts.*

First. On the 29th day of April, 1894, the parties to this suit entered into a written contract, a copy of which, marked "copy of contract," is hereinafter set forth. Said contract was executed, accepted, and approved, as set forth in said contract and in the 76 endorsement on the back thereof.

Second. The provisions of said contract, in so far as plaintiff is concerned, have been fulfilled.

Third. There is a balance due the plaintiff from defendant under said contract of five thousand and fifty-two and  $\frac{1}{16}$  dollars (\$5,052.56).

Fourth. Aultman, Miller & Company is a corporation organized and existing under the general laws of Ohio, having its corporate office in the city of Akron, county of Summit and State of Ohio, and having its manufactory at the same place.

Fifth. Aultman, Miller & Company do not manufacture any goods whatever within the State of Michigan.

Sixth. Aultman, Miller & Co. sells its goods in Michigan by means of local commission agents, and it has a general agent at the city of Lansing, in Michigan, and its commission agents are under similar contracts with the plaintiff to the one set forth in this action.

Seventh. All contracts are sent to Aultman, Miller & Co., at Akron, for approval or rejection before taking any effect.

Eighth. The goods sold by Aultman, Miller & Co. in the State of Michigan and manufactured at its factory at Akron, Ohio, are shipped from the factory upon orders received from commission agents, forwarded by the general agent from Lansing to Akron. Goods are shipped either direct to the commission agent or in bulk to Lansing or various points throughout the State and reshipped in smaller lots direct to the commission agent.

Ninth. Aultman, Miller & Co. own a warehouse in the city of Lansing for the transfer of such reshipments, for the temporary storage of a small stock of extras or repairs which experience 77 has shown may be suddenly needed by customers throughout the State during the harvest season. A portion of the commission agents throughout the State also keep on hand a very small stock of repairs for the immediate use of their customers. These are partially commission goods and partially goods sold direct to them.

Tenth. Accounts with every commission agent in the State of Michigan are kept at the office of the plaintiff in Akron, Ohio.

Eleventh. The plaintiff effects settlements with its commission agents by sending to its general agent copies or statements of all such accounts. The general agent and his assistant check over the season- work with the commission agent, collect pay for the machines sold in notes or cash or both, and forward the same direct at once to the plaintiff at Akron, Ohio, and the notes so taken are subject to the approval or rejection of the plaintiff.

Twelfth. All notes taken by the commission agents of Aultman, Miller & Co. are sent through its general agent at Lansing to the factory at Akron, Ohio, where they are numbered, recorded, filed, and retained until just before maturity, when they are sent direct to banks or express companies for collection and remittance direct to Akron, Ohio.

Thirteenth. Aultman, Miller & Company has never filed a copy of its articles of association in the office of the secretary of state of the State of Michigan or in any other office in Michigan, nor has said company ever paid any franchise fee to the State of Michigan or in any way complied or attempted to comply with section one of an act of the Michigan legislature entitled "An act to provide for the payment of the franchise fee by corporations," approved July 2, 1891, as amended by act No. 79 of the public acts of Michigan of 1893,

78 approved May 13, 1893 (Public Acts 1891, p. 240; Public Acts 1893, p. 82), and which said section one, as amended, reads as follows:

SECTION 1. The people of the State of Michigan enact, That every corporation or association hereafter incorporated or formed by consolidation or otherwise by or under any general or special law of this State which is required by law to file articles of association with the secretary of state and every foreign corporation or association which shall hereafter be permitted to transact business in this State which shall not prior to the passage of this act have filed or recorded its

articles of association under the laws of this State, and been thereby authorized to do business therein, shall pay to the secretary of state a franchise fee of one-half of one mill upon each dollar of the authorized capital stock of such corporation or association, and a proportionate fee upon any and each subsequent increase thereof, and that every corporation heretofore organized or doing business in this State which shall hereafter increase the amount of its authorized capital stock shall pay a franchise fee of one-half of one mill upon each dollar of such increase of authorized capital stock of such corporation or association and a proportionate fee upon any and each subsequent increase thereof: Provided that the fee herein provided, except in cases of increase of capital stock, shall in no case be less than five dollars, and in case any corporation or association hereafter incorporated under the law of this State, or foreign corporation authorized to do business in this State, has no authorized capital stock, then in such case each and every corporation or association so incorporated or doing business in this State shall pay a franchise fee of five dollars. All the contracts made in this State after the first day of January, eighteen hundred and ninety-four, by any corporation which has not first complied with the provisions of this act shall be wholly void."

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*Copy of Contract.*

This agreement, made this 20th day of February A. D. 1894, between Aultman, Miller & Co., (a corporation duly incorporated under the laws of the State of Ohio) of Akron, Ohio, of the first part, and William Holder of Laingsburg, county of Shiawassee, and State of Michigan, of the second part, witnesseth: That the party of the second part is hereby authorized to sell Buckeye mowers, 79 reapers and binders, and extra parts thereof, in the following territory, viz: Laingsburg and vicinity and Elsie and vicinity, including the townships of Washington and Elba in Gratiot county, Chapin in Saginaw county, and the west half of Fairfield in Shiawassee Co., for and during the season of 1894, on the following terms and conditions, viz: The party of the second part agrees:

First. To use all reasonable diligence in canvassing and supplying said territory with said machines, and in amaintaining their reputation in preference to any other kind of mowers and combined mowing and reaping machines, and harvesters and binders, and not to canvass or solicit orders outside of the above territory.

Second. To sell the said machine at the retail list prices authorized by said first party, with freight and charges from Laingsburg added thereto, on the following terms, viz: One-half October 1, 1894, one-half October 1, 1895. In extreme cases one-third October 1, 1894, one-third October 1, 1895, one-third October 1, 1896, shall be allowed on binders only, for which settlement must be made with the purchaser on the delivery of machines; and to grant credit to such persons only as are of well-known responsibility and of good reputation for the payment of their debts; to see that all notes taken for machines sold are drawn on blanks furnished by the said first party, and

signed by one or more persons of well-known responsibility ; and in all cases of doubt as to the responsibility of the purchaser, to require a mortgage on property, real or personal, amply sufficient to secure a payment in full of all such notes ; all notes to bear interest as specified in the blanks provided by first party, and in no instance to run beyond the time above mentioned. And if at any time the party of the first part shall learn that any of the said notes were not signed by persons of well-known responsibility, then the 80 party of the second part agrees to redeem all such notes with accrued interest, in cash or approved notes at the option of the party of the first part.

Third. To endorse with waiver of protest and notice of non-payment, all notes given by renters and parties owning no real estate, unless sufficiently secured by chattel mortgage or otherwise, and all notes which on examination by banker or other competent authority, chosen by the first party or its general agent are pronounced not good or insufficiently secured.

Fourth. That all machines and parts of machines, and all other goods received on commission under this contract shall be held by the said second party on special storage and deposit as the property of the party of the first part until converted into notes or money, as herein provided, which notes are to be received by said second party and held on special deposit as the property of said Aultman, Miller & Co., until forwarded to said Aultman, Miller & Co., or delivered to their authorized agent. That in all cases where machines are sold for cash or part cash and notes, all such cash received shall be promptly remitted to Aultman, Miller & Co., Akron, Ohio, or their authorized agent, and that any and all sums of money that may in any case become due and owing from said party of the second part, to said party of the first part, shall be collectible without any relief whatever, from valuation or appraisement laws.

Fifth. To see that all machines sold are properly set up and started, and, as far as possible, that they give satisfaction to the purchaser; and to keep a correct record of sales, showing the name and post-office address of each purchaser, with price, terms and date of sale said record of sales to be reported to the party of the first part at its request, and at all times to be subject to the inspection of its general agent.

81 Sixth. To receive all machines, extras or other goods shipped or delivered on account of said first party ; to pay the freight on them keep them well housed, well cared for, free from taxes, and to insure in a reliable company all goods of every nature on hand that belong to Aultman, Miller & Co., with loss or damage on the same made payable to Aultman, Miller & Co., as their interest in said property may appear, at the time of said loss or damage. To keep all unsold goods well housed and cared for, subject to the order of party of the first part until renewal of this contract, or if necessary up to May 1, 1895, and in no case making charge for handling or storing the same ; ordinary freight charge in all cases to follow machines and extras reshipped ; but no express charges shall follow goods reshipped, nor shall the party of the first part in any case be

obliged to pay express charges on goods shipped to the party of the second part.

Seventh. In furnishing repairs free of charge to customers, to do so only when there is a flaw or defect in the original, and in all cases of repairs so furnished to have on hand the broken or defective piece to show at settlement, and to deliver the same to the party of the first part, otherwise bills of this kind will not be allowed; and in no case whatever, to take from any machine belonging to the first party any part thereof as extras or repairs; to pay at settlement for all machines on hand, in case of a violation of this clause.

Eighth. To make prompt and accurate reports of machines on hand as often as requested by the first party or its general agent; to promptly execute orders for transfer of machines, if any are on hand unsold; and in case of failure to make such reports or transfers to pay said first party for all machines remaining on hand at settlement, unsold by reason of such failure, at the option of said first party.

82 Ninth. To sell or assist in the sale of no other mowing machines, or combined mowing and reaping machines, or harvesters and binders, in said territory, during the continuance of this contract, and not to purchase, keep in stock or offer for sale binding twine, knives, sickles, sections or other parts of the Buck-eye machines manufactured and furnished by any other than the first party.

Tenth. To sell and deliver all machines set up and used as samples, or settle for same in cash or approved notes at settlement time.

Eleventh. To publish a notice of this agency in any one or more newspapers in the above-named territory during the months of April May and June, without charge to the first party hereto. To receive and pay transportation charges on all advertising matter forwarded by said first party, and to see that it is properly distributed among the farmers of the above-described territory.

The party of the first part further agrees with the party of the second part:

First. To furnish to said second party such machines of the kinds they make as may be wanted to supply said territory, so long as their stock on hand will enable them to fill the orders. No commission will be allowed on orders taken and not filled nor on machines which have for any cause been returned, and in no case shall the party of the second part be entitled to a commission on a sale where the machine has not been delivered and properly set up and started to the satisfaction of the purchaser and settled for. Nor shall any commission, whatever, be due said second party until a full settlement of account is made; and that the said second party be ready to make settlement on demand of the first party or their authorized agent.

Second. To allow said second party as compensation for 83 receiving, handling, storing, selling, setting up and starting machines, and making collections, whenever required, a commission equal to an amount which, deducted from the price for

which the machines have been sold, after deducting other allowances of every nature, will make the net amount to be retained by the said first party in notes and cash in the same proportion as taken for machines sold as follows:

	Width of cut.	If sold for cash.	If sold for notes.
Buckeye light mower .....	4 feet 3 in.	33 00	35 00 each
Buckeye light mower, one horse....	3 " 9 "	32 00	34 00 "
New Buckeye mower.....	4 " 6 "	34 00	36 00 "
New Buckeye mower (t-o combine-). 4 feet 6 in.			
Buckeye mower .....	5 feet	35 00	37 00 "
Buckeye mower .....	6 feet	40 00	42 00 "
New Buckeye table rake .....	5 feet 2 in.		
New Buckeye dropper.....	5 feet 2 in.		
Buckeye frameless binder .....	5 feet	90 00	90 00 "
Buckeye frameless binder .....	6 feet	90 00	95 00 "
Buckeye frameless binder.....	7 feet		
Buckeye Banner binder .....	5 feet 3 in.	90 00	95 00 "
Buckeye bundle-carrier for binder.....		4 50	"
Buckeye flax and clover dump .....		2 70	"
Buckeye binder truck, two-wheeled.....		6 75	"

Where an outfit consisting of binder, trucks and bundle-carrier is sold to one person the net cash price shall be \$95.00. Time price \$95.00 for 5-ft. machines and \$95.00 cash or \$100.00 time for 6-ft. machines.

Third. To furnish the said second party a stock of extra castings and other repairs (excepting knives, sickles, knife and sickle heels, sections, rivets, guards, canvasses, pitman, ferrules, 84 spring keys, brass boxes, chain links, bolts and other net goods), from the prices of — as found in the published price-list, a commission of 25% will be allowed; all such extras sold to be paid for in cash on demand of the first party or their authorized agent.

Fourth. To sell to said second party knives and sickles, and knife and sickle heels, guards, sections and rivets, at a discount of 50 per cent., and pitman ferrules, spring keys, brass boxes, chain links, canvasses, bolts and other net goods, at a discount of 50 per cent., all to be paid for in cash on or before the first day of August, 1894.

Fifth. To furnish said second party blank notes, orders, circulars and posters, and such other printed documents as they are accustomed to supply their agents.

NOTICE.—It is especially agreed that when sales have not been closed by cash or notes on or before delivery as stated above, then the party of the first part may send a person to settle with the purchasers of machines, and the party of the second part shall pay all the expenses of making such settlements. It is further agreed that Aultman, Miller & Co., shall not be held liable under any written or printed warranty given by them on their machines that are allowed to go out without first having been settled for.

No canvasser or expert that may be sent to aid you shall have any authority to make any change, whatever, in our contract with you, and all sales made by him will be subject to your approval or rejection, as no allowance will be made to you for loss of interest or reduction in price on sales made by him; nor will any promise not authorized in writing by our manager at Lansing, Mich., be recognized at settlement, and the first party reserves the right to rescind or annul this contract at any time that the said party 85 of the second part shall violate or neglect to fulfill any of the above stipulations.

In witness whereof, the parties hereunto have set their hands the day and date above written.

AULTMAN, MILLER & CO.,  
By D. C. GILLETT.  
WM. HOLDER.

This contract not valid unless countersigned by ~~c~~ manager at Lansing, Mich., and app. at Akron.

Countersigned, Lansing, Mich., Feb. 27, 1894.  
R. H. WORTH, *Manager.*

Across the back of said contract are the words, "Approved April 29, 1894. Ira M. Milloy, secretary."

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### *Findings of Law.*

On the above and foregoing finding of facts the court finds the following conclusions or findings of law:

1. The business of Aultman, Miller & Co. as carried on under and in pursuance of the said contract is an interstate-commerce business, and said company is not subject to section one of the Michigan franchise-fee act of 1891, as amended by act No 79 of the public acts of Michigan of 1893, and said last-named act is, so far as it applies or purports to apply to foreign corporations like Aultman, Miller & Co., which are doing in Michigan an interstate-commerce business, is in conflict with the provision of the Constitution of the United States authorizing Congress to regulate commerce with foreign nations and among the several States and with the Indian tribes.

2. Said contract was made and executed in the State of Ohio and is an Ohio contract, and it does not provide for the transaction of any business in Michigan other than an interstate-commerce business, and the plaintiff is therefore within the protection of the Constitution of the United States.

3. Upon the facts found the plaintiff is entitled to recover the sum of \$5,052.56, with interest, at six per cent., from Nov. 3, 1894, and a judgment will therefore be entered in favor of the plaintiff and against the defendant for \$5,212.56 and costs.

86½ [Endorsed:] United States of America. In the Supreme Court. Aultman, Miller & Company, plaintiff, vs. William Holder, defendant. Petition for writ of error. Washington, D. C.,

—, 1895. On filing the within petition in the office of the clerk of the circuit court of the United States for the eastern district of Michigan, let a writ of error issue as therein prayed. H. B. Brown. Wood & Wood, att'y's for petitioner.

*Writ of Error.*

UNITED STATES OF AMERICA, 88:

United States Supreme Court.

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Aultman, Miller & Company, a corporatio-, plaintiff, and William Holder, defendant, a manifest error hath hap- pened, to the great damage of the said William Holder, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concern- ing the same, to the United States Supreme Court, together with this writ, so that you have the same at Washington, District of Columbia, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 29th day of November, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States of America the one hundred and twentieth.

JAMES H. MCKENNEY,  
*Clerk of the Supreme Court of U. S.*

Allowed by—

H. B. BROWN,  
*Associate Justice.*

88½ [Endorsed:] 8044. United States of America. In the Su- preme Court. Aultman, Miller & Company, plaintiff, *vs.* William Holder, defendant. Writ of error. Filed in clerk's office Dec. 12, 1899. Walter S. Harsha, clerk. Wood & Wood, att'y's for petitioner.

## Bond.

Know all men by these presents that we, William Holder, of the village of Laingsburg, county of Shiawassee and State of Michigan, as principal, and Percy A. Covert, of the city of Lansing, county of Ingham and State of Michigan, as sureties, are holden and stand firmly bound unto Aultman, Miller & Co., a corporation legally organized and doing business under the laws of the State of Ohio, in the penal sum of seven thousand dollars (\$7,000), for the payment whereof, well and truly to be made unto the said Aultman, Miller & Co., their representatives and assigns, we bind ourselves, our representatives and assigns, jointly and severally, firmly by these presents.

Whereas judgment was duly rendered on the 2nd day of November, 1895, in the circuit court of the United States for the sixth circuit and eastern district of Michigan by Henry H. Swan, district judge, in favor of the said Aultman, Miller & Co., plaintiff, for the sum of five thousand two hundred — twelve dollars (\$5,212) and costs; and

Whereas the said William Holder has applied for a writ of error for the removal of the said judgment into the Supreme Court of the United States:

Now, therefore, the obligation is such that if the said William Holder shall prosecute this writ of error to effect, and if he fail to make his plea good shall answer all damages and costs that shall be awarded against him, the said William Holder, then this obligation shall be void; otherwise to remain in full force and virtue.

90 In witness whereof the said William Holder and Percy A. Covert have hereunto set their hands and seals this 25th day of November, 1895.

WILLIAM HOLDER. [L. S.]  
PERCY A. COVERT. [L. S.]

Signed, sealed, and delivered in presence of—

[Notarial Seal.]

F. E. CHURCH.  
WINIFRED SEPLEY.

STATE OF MICHIGAN, }  
County of Ingham, }<sup>ss</sup>:

On this 25th day of November, 1895, before me, a notary public in and for the said county, personally appeared the above-named William Holder, of Laingsburg, Shiawassee county, Michigan, and Percy A. Covert, of Lansing, Ingham county, Michigan, both of whom are to me known to be the individuals described in and who executed the foregoing instrument, and then and there each of them severally acknowledged that he had executed the foregoing bond.

F. E. CHURCH,  
Notary Public.

[SEAL.]

I consent to the approval of the above and foregoing bond.

FRED. A. BAKER,  
*Att'y for Plaintiff.*

Detroit, Nov. 27th, 1895.

Approved.

H. B. BROWN,

*Associate Justice of the Supreme Court  
of the United States.*

Filed in clerk's office Dec. 12, 1895.

WALTER S. HARSHA, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

United States Supreme Court.

To Aultman, Miller & Co., a corporation, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Supreme Court, to be holden at the city of Washington, D. C., within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Michigan, wherein William Holder is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry B. Brown, associate justice of the Supreme Court of the United States, this twenty-ninth day of November, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States of America the one hundred and twentieth.

HENRY B. BROWN,  
*Associate Justice.*

Service accepted Dec. 10th 1895.

FRED. A. BAKER,

*Attorney for Defendant in Error, Aultman, Miller & Co.*

91½ [Endorsed:] 8044. United States of America. In the Supreme Court. Aultman, Miller & Company, plaintiff, *vs.* William Holder, defendant. Citation. Filed in clerk's office Dec. 12, 1895. Walter S. Harsha, clerk. Wood & Wood, att'y's for petitioner.

92 *Time to Make Return to Appeal Extended.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjourn-

ment, at the district court-room, in the city of Detroit, on Saturday, the twenty-eighth day of December, in the year one thousand eight hundred and ninety-five.

Present: The Honorable Henry H. Swan, district judge.

AULTMAN, MILLER & COMPANY }  
v. } No. 8044.  
WILLIAM HOLDER. }

On the application of the clerk, for cause shown, the time to make return to writ of error is hereby extended twenty days.

93 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of Michigan.

AULTMAN, MILLER & COMPANY }  
v. } No. 8044.  
WILLIAM HOLDER. }

EASTERN DISTRICT OF MICHIGAN, ss:

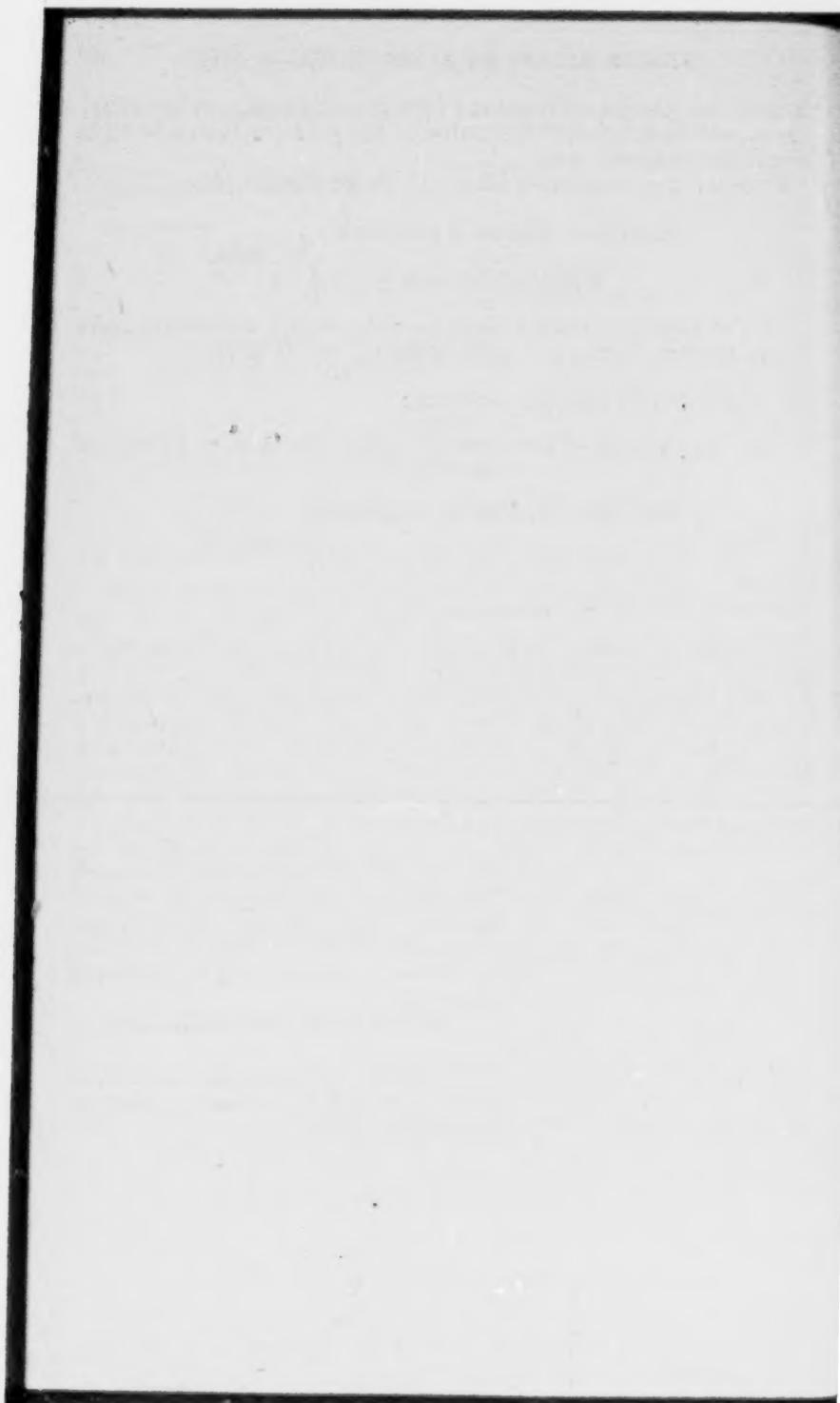
I, Walter S. Harsha, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify and return to the writ of error sued out by the above-named defendant to the Supreme Court of the United States that the above and foregoing is a true copy of the record and proceedings in said cause, together with the original petition for writ of error, writ of error, and citation; that I have compared the copies with the original, and they are true and correct transcripts therefrom and of the whole thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Detroit, in said district, this 28th day of December, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States of America the one hundred and twentieth.

WALTER S. HARSHA, Clerk.

Seal of the Circuit Court, Eastern District of Michigan.

Endorsed on cover: Case No. 16,158. E. Michigan C. C. U. S. Term No. 109. William Holder, plaintiff in error, vs. Aultman, Miller & Company. Filed January 23, 1896.



Supreme Court of the United States.

WILLIAM HOLDER, Plaintiff in Error, } No. 109. October Term,  
vs. } 1897.  
AULTMAN, MILLER & Co., Defendants. }

It is hereby stipulated and agreed by and between the parties to the above cause, by their respective attorneys, that the contract as printed on pages one to five, inclusive, of the printed record of said cause is incorrect, and that the said contract was drawn, executed, and signed as in the copy printed on pages twenty-six to thirty, inclusive, of the said printed record, and that the said declaration be considered as amended to show a copy of the contract corrected as above.

Dated Aug. 21, 1897.

EDWARD CAHILL,  
*Attorney for Plaintiff in Error.*  
FRED. A. BAKER,  
*Attorney for Defendant in Error.*

[Endorsed:] Case No. 16,158. Supreme Court U. S., October term, 1897. Term No., 109. William Holder, plff in error, *vs.* Aultman, Miller & Co. Stipulation of counsel correcting record. Office Supreme Court U. S. Filed Aug. 26, 1897. James H. McKenney, clerk.